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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 302.



**ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY, PLAINTIFF IN ERROR,**

vs.

THE STATE OF ARKANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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FILED DECEMBER 17, 1914.

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In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Information.

Comes Gibson Witt, Prosecuting Attorney for the Eighteenth Judicial Circuit of Arkansas, and files information against the defendant, the St. Louis, Iron Mountain & Southern Railway Company, and alleges that said company is a railroad corporation operating a railroad in Garland County, Arkansas, more than 100 miles in length, and that the City of Hot Springs, in said County and State, is a city of the first class; that on the 17th day of June, 1913, said defendant owned and operated yards and terminals in said city where switching, pushing and transferring of cars are done across public crossings within the limits of said City; that on said day defendant operated a certain switch crew with less than the number of men required by law, that is, less than one engineer, a fireman, a foreman and three helpers, and switched, pushed and transferred certain cars across certain streets in said city, in violation of the statute in such cases made and provided.

GIBSON WITT,

Prosecuting Attorney Eighteenth Judicial Circuit.

STATE OF ARKANSAS,

County of Garland:

Gibson Witt, says he believes the statements set forth in the foregoing complaint or information are true.

GIBSON WITT.

Subscribed and sworn to before me this 18 day of June, 1913.

[SEAL.]

A. G. SULLENBERGER, *Clerk,*

By W. H. MOYSTON, *D. C.*

Filed June 19, 1913.

A. G. SULLENBERGER, *Clerk,*

By W. H. MOYSTON, *D. C.*

Summons.

Garland Circuit Court.

STATE OF ARKANSAS,

County of Garland, ss:

To the Sheriff of Garland County:

You are hereby commanded to summon the St. Louis, Iron Mountain and Southern Railway Company to appear in the Garland

Circuit Court, on the first day of its next September term, to answer an information filed by the Prosecuting Attorney for misdemeanor filed against it in that court.

Given under my hand and official seal of said Court, this 21st day of June, 1913.

[SEAL.]

A. G. SULLENBERGER, *Clerk*,
By W. H. MOYSTON, *D. C.*

I have this the 27 day of June, 1913, duly served the within Summons by delivering a true copy of it to C. J. Blackman, Agent, for the St. L. I. M. & S. Ry Co. as therein commanded.

R. L. WILLIAMS, *Sheriff*,
By W. R. DOWNEN, *D. S.*

In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Special Plea.

Comes the defendant and without waiving its demurrer herein for its special plea herein alleges:

1.

It admits that it is a railroad corporation operating a railroad in Garland County, Arkansas, which is more than 100 miles in length; and that the City of Hot Springs, in said County and State, is a city of the first class.

Defendant admits that on the 17th day of June, 1913, it operated and ran a certain freight train No. —, Engine No. —, and that on said date it was engaged in switching cars across a certain public crossing within the city limits of the City of Hot Springs, and that while doing so it operated a certain switch crew, composed of 1 engineer, a fireman, a foreman, and two helpers and no more.

Defendant states that said train was at the time engaged in Interstate Commerce, and defendant denies that it violated Act No. 57, of the General Assembly of the State of Arkansas, approved February 20, 1913, and denies that such Act was applicable to the above switch crew.

2.

For further defense, defendant alleges that said Act is unconstitutional, because section 3, thereof exempts from its application all railroad companies operating railroads less than 100 miles in length, defendant alleges that there are several railroad companies in this State operating railroads less than 100 miles in length which do switching of cars across public roads within

the State. Defendant alleges that said Act is unconstitutional and in conflict with Section 1, of the 14th Amendment of the Constitution of the United States, in depriving this defendant of the equal protection of the laws.

3.

Defendant alleges that section 4, of said Act is void in that — imposes a penalty of not less than \$50.00, for each separate offense, but imposes no maximum penalty, the effect being to render the defendant liable to excessive fines within the prohibition of Section 9, of Article 2, of the Constitution of Arkansas, prohibiting the imposition of cruel and unusual punishment.

4.

Defendant alleges that said Act is void in imposing an unreasonable burden upon this defendant in violation of Section 1, of the 14th. Amendment of the Constitution of the United States, which provides that no State shall deprive any person of property without due process, nor to deny to any person within its jurisdiction the equal protection of the law, and that, under the provisions of said Act, this defendant is only allowed a hearing upon the question of alleged violations of the statute at the risk, if mistaken, of being subjected to such enormous penalties as to result in the confiscation of its entire property, and so excessive and enormous as to, in effect, prohibit this defendant from seeking judicial determination of matters which deeply affect its rights and property, all in violation of Section 1, of Article 14, of the Articles in amendment of the Constitution of the United States.

5.

The defendant alleges that said act imposes an unnecessary and unreasonable burden on the defendant and deprives it of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law.

6.

The requirement of said statute, that defendant shall operate its switching crew in cities, with not less than six men, is arbitrary and unreasonable and there is no public necessity for such a requirement. The protection and safety of the public does not require the operation of said crews with six members. Two helpers in addition to a foreman, an engineer and a fireman are amply sufficient to operate and do the work required of switching crews in cities of the first and second class, with promptness, efficiency and safety to the public and to the employees. The employment of an extra switchman or helper, as required by this act imposes a burden upon this defendant which is arbitrary and unreasonable and unnecessary and from which neither defendant nor the public receives any

benefit; the employment of such extra switchmen will add an expense of approximately eight thousand dollars per month to the defendant's pay roll in the State of Arkansas, for which expenditure it will receive no corresponding benefit, nor will the safety or protection of the public be promoted or advanced thereby. All the duties connected with or necessary to the movement of cars and freight in the switching operations conducted by defendant in cities of the first and second class in the State of Arkansas, have been performed and can be performed by five men, being a foreman, an engineer and fireman, and two helpers with no more hazard to the public or defendant's employees than is necessary incident to such operations however conducted, there is no work for the additional helper required by said statute to do which cannot be done and which — not being done already with reasonable safety to the public and defendant's employees by the members of such crews as operated by defendant prior to the passage of the statute. Said statute therefore requires defendant to pay a large sum of money to employees whose services it does not need and which are of no value to defendant, which is an arbitrary and unreasonable requirement and thereby deprives the defendant of its property without due process of law, and denies to the defendant the equal protection of the law, contrary to the provisions of Section 1, Article 14, of the Articles in amendment of the Constitution of the United States.

Wherefore, defendant prays that the court investigate this its special plea, and upon hearing thereof that it find and adjudge that the statute aforesaid is invalid and of no effect, and that defendant is not guilty of violation thereof.

E. B. KINSWORTHY,
R. E. WILEY,
Attorneys for Defendant.

Filed July 5th, 1913.

A. G. SULLENBERGER, *Clerk*,
By W. H. MOYSTON, *D. C.*

9

In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Information.

Comes Gibson Witt, Prosecuting Attorney for the Eighteenth Judicial Circuit of Arkansas, and files information against the defendant, the St. Louis, Iron Mountain & Southern Railway Company and alleges that said company is a railroad corporation operating a railroad in Garland County, Arkansas, more than 100 miles in length and that the City of Hot Springs, in said County, and

State, is a City of the first class; that on the 17th day of June, 1913, said defendant owned and operated yards and terminals in said city where switching, pushing and transferring of cars are done across public crossings within the limits of said city; that on said day defendant operated a certain switch crew with less than the number of men required by law, that is, less than one engineer, a fireman, a foreman and three helpers and switched, pushed and transferred certain cars across certain streets in said city, in violation of the statute in such cases made and provided.

GIBSON WITT,

Prosecuting Attorney, Eighteenth Judicial Circuit.

Filed Oct. 14th, 1913.

A. G. SULLENBERGER, *Clerk*,
By W. H. MOYSTON, *D. C.*

10

In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Demurrer.

Comes the defendant, St. Louis, Iron Mountain & Southern Railway Company and demurs to the information herein and for cause alleges that same does not charge a public offense.

Defendant demurs specially upon the ground that said Act is void as being an interference with the Interstate Act of Congress of 1887, and amendments thereto.

Defendant demurs because said Act of February 20, 1913, is unreasonable and imposes an unnecessary burden upon this defendant and is in effect a taking of defendant's property without due process and a deprivation of the equal protection of the laws.

Defendant demurs because said Act is void in that it imposes a penalty of not less than fifty dollars for each separate offense and imposes no maximum penalty, the effect being to render defendant liable to excessive fines contrary to Section 9, of Article 2, of the Constitution of Arkansas.

Defendant alleges that said act is void in imposing an excessive and unreasonable burden upon this defendant in violation of Section 1, of the Fourteenth Amendment of the Constitution of the United States, which provides that no State shall deprive any person of property without due process, nor deny to any person within its jurisdiction the equal protection of the law, and under the provisions of said act this defendant is only allowed a hearing upon the question of the alleged violation of said statute, at the risk, if mistaken, of being subjected to such enormous penalties as to result in the confiscation of the entire property, and so

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excessive and enormous as in effect to prohibit this defendant from seeking judicial determination of matters which deeply effect its rights and property, and in violation of Section 1, of Article Fourteen of the Articles in Amendment of the Constitution of the United States.

Wherefore, defendant prays that its demurrer be sustained and that this case be dismissed.

E. B. KINSWORTHY,
Att'y for Defendant.

Filed Oct. 14, 1913.

A. G. SULLENBERGER, *Clerk.*
By W. H. MOYSTON, *D. C.*

12

In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Special Plea.

Comes the defendant, and without waiving its demurrer herein for its special plea herein alleges:

I

It admits that it is a railroad corporation operating a railroad in Garland County, Arkansas, which is more than 100 miles in length; and that the City of Hot Springs, in said County and State, is a city of the first class.

Defendant admits that on the 17th day of June, 1913, it operated and ran a certain freight train, No. —, Engine No. —, and that on said date it was engaged in switching cars across a certain public crossing within the city limits of the City of Hot Springs, and that while doing so it operated a certain switch crew, composed of 1 engineer, a fireman, a foreman, and two helpers, and no more.

Defendant states that said train was at the time engaged in Interstate Commerce, and defendant denies that it violated Act No. 57, of the General Assembly of the State of Arkansas, approved February 20, 1913, and denies that such Act was applicable to the above switch crew.

2.

For further defense, defendant alleges that said Act is unconstitutional, because section 3, thereof exempts from its application all railroad companies operating railroads less than 100 miles in length. Defendant alleges that there are several railroad companies in this State operating railroads less than 100 miles in length which do switching of cars across public roads within

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the State. Defendant alleges that said Act is unconstitutional and in conflict with Section 1, of the 14th Amendment of the Constitution of the United States, in depriving this defendant of the equal protection of the law.

3.

Defendant alleges that Section 4, of said Act is void in that it imposes a penalty of not less than \$50.00 for each separate offense, but imposes no maximum penalty, the effect being to render the defendant liable to excessive fines within the prohibition of Section 9, of Article 2, of the Constitution of Arkansas, prohibiting the imposition of cruel and unusual punishment.

4.

Defendant alleges that said Act is void in imposing an unreasonable burden upon this defendant in violation of Section 1, of the 14th Amendment of the Constitution of the United States, which provides that no State shall deprive any person of property without due process, nor deny to any person within its jurisdiction the equal protection of the law, and that under the provisions of said act, this defendant is only allowed a hearing upon the question of alleged violations of the statute at the risk, if mistaken, of being subjected to such enormous penalties as to result of the confiscation of its entire property, and so excessive and enormous as to, in effect, prohibit this defendant from seeking judicial determination of matters which deeply affect its rights and property, all in violation of Section 1, of Article 14, of the Articles in amendment of the Constitution of the United States.

5.

The defendant alleges that said act imposes an unnecessary and unreasonable burden on the defendant and deprives it of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of life; liberty or property without due process of law.

6.

Defendant alleges that under ordinary circumstances two switchmen in addition to a foreman, an engineer and a fireman, are amply sufficient to do the required switching in cities of the first and second class with promptness, safety and efficiency. That the employment of an extra switchman, as required by this act, imposes an unnecessary burden upon this defendant from which it receives no benefit whatever; that such requirement will add an expense of approximately eight thousand dollars per month to defendant's pay roll; that said act is void as depriving the defendant of its property without due process of law, and as denying it the equal protection of the law.

Wherefore, defendant prays it be found not guilty.

E. B. KINSWORTHY,
Att'y for Defendant.

Filed Oct. 14th, 1913.

A. G. SULLENBERGER, *Clerk*,
By W. H. MOYSTON, *D. C.*

15

In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,
vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Demurrer.

Comes the plaintiff by Gibson Witt, Prosecuting Attorney for the Eighteenth Circuit and Jackson and Jones and demurs to paragraphs numbered, one, two, three and four of the defendant's answer and for cause states that same do not present a defense to the plaintiff's information filed herein.

GIBSON WITT,
Pros. Att'y.
JACKSON & JONES.

Filed Feb'y 26th, 1914.

A. G. SULLENBERGER, *Clerk*,
By W. H. MOYSTON, *D. C.*

16

In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,
vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Motion for a New Trial.

Comes the defendant, The St. Louis, Iron Mountain & Southern Railway Company, by its attorney, E. B. Kinsworthy, and moves the court to set aside the verdict and finding of the Court herein and grant it a new trial, and for cause says:

First. Because the court erred in overruling and in refusing to sustain the demurrer filed by the defendant to the information in this case.

Second. Because the Court erred in sustaining over the objection of the defendant the State's demurrer to the first count and defense set up in defendant's special plea, in so far as it set up the defense that said train was at the time engaged in Interstate Commerce.

Third. Because the Court erred in sustaining over the defendant's objection the State's demurrer to the second count and defense set up in defendant's special plea.

Fourth. Because the court erred in sustaining over defendant's objection the State's demurrer to the third count and defense set up in defendant's special plea.

Fifth. Because the Court erred in sustaining over defendant's objection the State's demurrer to the fourth count and defense set up in defendant's special plea.

17 Sixth. Because the court erred in refusing to allow witness J. W. Dean to answer the following question propounded by defendant's counsel:

"Q. If I understand, after the cars come into Argenta for these industries they would be hauled across the bridge, fifteen or twenty cars, or more, at a time, and then they would be switched to the industries?"

Seventh. Because the court erred in refusing to allow witness J. W. Dean to answer the following question propounded by defendant's counsel:

"Q. Along any other industry track it would be the same thing, would it not?"

Eighth. Because the court erred in refusing to allow witness R. C. White to answer the following question propounded by defendant's counsel:

"Q. I will ask you—if you know—where there is an underground crossing, a viaduct, or a protected crossing, whether or not a great volume of trains pass across and over these crossings?"

Ninth. Because the court erred in refusing to allow witness R. C. White to answer the following question: (Referring to where they would place a switchman at a crossing)

"Q. Well, also, that would have something to do with the number of trains that would cross over the track or crossing—that would also have something to do with it, would it not?"

Tenth. Because the court erred in refusing to allow the defendant to prove by witness B. W. Moore, on direct examination, the

18 following facts:

"That Gurdon is not a city of the second class, but that it is a terminal and division point where the Womble and Pike City Branch and the Louisiana Division of the Iron Mountain make connection with the main line; that the switching done in Gurdon is done across public streets and in the main part of the town, and that the number of cars handled at Gurdon is far greater than the number handled at Hope; and that the work at Gurdon is done as well as it is at Hope and with as much safety to the public, and there they have only an engineer, a fireman, a foreman and two helpers with the switching crew."

Eleventh. Because the Court erred in allowing counsel for the State to ask witness B. W. Moore, on cross-examination, the following question over the objection of defendant:

"Q. Did you ever see any cars over in Argenta kick- across a public crossing?"

Twelfth. Because the court erred in allowing counsel for the State to ask witness B. W. Moore, on cross-examination, the following question, over the objection of defendant, and in permitting the witness to answer said question, over the objection of defendant:

"Q. Mr. Moore did you ever see cars kicked over a public crossing either in Argenta or Little Rock, or any other terminal?

A. Yes, sir."

Thirteenth. Because the court erred in refusing to allow witness H. B. Bray to answer the following question propounded by counsel for defendant (referring to the use of three men in the Little Rock yards of the Rock Island):

"Q. It don't increase the safety at all?

19 Fourteenth. Because the court erred in refusing to allow witness H. B. Bray to answer the following question propounded by counsel for defendant:

"Q. Would a third man increase the safety?"

Fifteenth. Because the court erred in allowing witness H. B. Bray to be asked on cross-examination each of the following questions, and in permitting the witness to answer each question, and in refusing to exclude each question and each answer:

"Q. Don't you think, Mr. Bray, if you had an increase of business on account of a fair, or otherwise, where more cars were brought in to be switched and put an extra burden on the switchmen at that particular time, you would need the third man?

A. That would depend altogether on the amount of business there was to be handled at the place that required this increase.

Q. That would depend on the amount of business brought in on the special occasion?

A. That's it."

Sixteenth. Because the court erred in allowing witness S. H. Barnes to be asked the following question on cross-examination, over the objection of the defendant, and in permitting said witness to answer said question over the objection of the defendant, as follows:

"Q. Now if you have an occasion, such as a public fair, would *would* increase the business, of any kind—the amount of cars to be switched, wouldn't that have a bearing on the number of men with each crew?

A. Not with the number of men necessary, no."

20 Seventeenth. Because the court erred in allowing witness W. C. Morris to be asked the following question on cross-examination, over the objection of defendant:

"Q. Now if you are pushing any considerable string of cars around one of the curves in Helena, where the buildings are jam up to the track, where you say probably—in some places, where you cannot see more than five or six car lengths, do you think that would require the third man?"

Eighteenth. Because the court erred in refusing to allow the defendant to prove by witness J. B. Moore that the L. N. O. & T. Railway Company, at Helena, does the switching for the Y. & M. V. Railway Company, a railroad more than three hundred miles in length, and all of the switching for the Missouri & North Arkansas Railway

Company coming into Helena; said railroad being over three hundred miles in length and that on account of the length of the road—the L. N. O. & T. road not being fifty miles in length, it does not have to comply with the law and use the third helper, and it does not comply with the law and does not use the third helper; and that in proportion to the number of engines used by the L. N. O. & T. Railway Company, that it does as much switching in the town of Helena, as the St. Louis, Iron Mountain & Southern Railway Company does, and switches across public crossings in the City of Helena.

21 Nineteenth. Because the court erred in refusing, over the objection of defendant, to allow witness O. C. Cornelson to answer the following question on direct examination:

“Could you tell me the average number of freight cars handled by your switch engine in Fort Smith, at a time, or at each movement?”

Twentieth. Because the court erred in sustaining the objection of the State and in excluding the following question propounded by defendant’s counsel on re-direct examination, and in excluding the answer thereto:

“Q. Mr. Cornelson, I understand the more work you had the more men you would have to do the switching; you sayd during the cotton season you had two men at Ft. Smith and during part of the year you only had one; I understand, during the rush reason you had two helpers?

A. One foreman and two helpers.”

Twenty-first. Because the court erred in sustaining the State’s motion to exclude the following testimony of J. H. Wright, over the objection of defendant:

“Q. How long is the Arkansas Central Railroad?

A. 46 miles.

Q. From what place to what place does it run?

A. From Fort Smith to Paris in Logan county.

Q. Do you go into Fort Smith?

A. We go in over the Iron Mountain under trackage rights.

Q. You mean by trackage rights, you can have the right to run over the tracks of the Iron Mountain?

A. We lease those tracks and use them in common with the Iron Mountain, having the same rights over them as they do.

22 Q. Do you do switching in Fort Smith?

A. Yes, sir.

Q. Over what tracks do you switch in Fort Smith?

A. All of the tracks owned by the Iron Mountain.

Q. How much of a crew do you use in doing your switching?

A. We have two crews that switch there; one of them consists of an engineer, a fireman, a conductor and two brakemen; another consists of an engineer, a fireman, a conductor and one brakeman.

Q. And you switch over all the tracks that the Iron Mountain switches over?

A. Yes, sir, all of them.

Q. Now you say your switching crew is composed of an engineer, a fireman, a conductor and two brakemen?

A. Yes, sir.

Q. And the other is composed of an engineer, a fireman, a conductor and one brakeman?

A. Yes, sir, that is correct.

Q. Now all of these crews that do your switching there, do you have any trouble as to the safety of the public?

A. No, sir, we have never had an accident in Fort Smith yards.

Q. Do you have any trouble as to the safety of your employees?

A. No, sir, none whatever.

Q. Are they sufficient to do your work?

A. They do it easily."

Twenty-second. Because the court erred in sustaining the State's motion to exclude the following testimony of J. H. Wright, over the objection of defendant:

"Q. Where you use five men, is that *that* on passenger or freight trains?

A. That is the local freight train.

Q. The four men was used on what?

A. A passenger train. They become a switching crew as soon as they tie up as a passenger train.

Q. I don't understand?

A. I say they become a switching crew as soon as they tie up as a passenger train.

Q. Can you explain why it is necessary to have one more man on the freight than on the passenger?

A. Yes, the reason we have one more man on the freight is because we unload the local freight along the road and necessity
23 requires more than one man to do that work."

Twenty-third. Because the court erred in refusing to allow the defendant to prove by witness B. A. Porter, Superintendent of the L. N. O. & T. Ry. Co., that the L. N. O. & T. Ry. is less than five miles in length, that it is a terminal railway located at Helena, Arkansas, that this railroad does all the switching for the Missouri & North Arkansas Railroad at Helena, Arkansas, and that the M. & N. A. Ry. is something over 300 miles long; that it also does the switching of all the cars for the Y. & M. V. Ry. coming into Helena; that the Y. & M. V. Ry. is 1400 miles long; that they have two switch engines in the City of Helena; that these engines switch and push cars over the various crossings in the City of Helena for the Y. M. & V. Ry. and the Missouri & North Arkansas Railway and this road does not comply with the Act because it is less than one hundred miles in length, and in its switching crews they use only an engineer, fireman, foreman and two helpers."

Twenty-fourth. Because the Court erred in refusing to allow the defendant to prove by witness W. S. Cochran, conductor and train master of the Arkansas Central Railway Company, that the Arkansas Central Railway is 46 miles in length; that it runs from Paris, Arkansas, to Fort Smith, Arkansas; that it has no yards or terminals within the city of Fort Smith, but that it has a contract
24 with the St. Louis, Iron Mountain & Southern Railway Com-

pany, by which it uses all of the tracks and yards of said company for the purpose of switching its cars over said tracks; and it does switch and push its cars over all tracks belonging to the St. L. I. M. & So. Ry. Co., in the City of Fort Smith, and that in doing so it uses two engines, one of the engines has a crew of an engineer, a fireman, a foreman and one helper; the other has an engineer, a fireman, a foreman and two helpers.

Twenty-fifth. Because the court erred in refusing to allow the defendant to prove by witness J. W. Dean, General Superintendent for the St. Louis, Iron Mountain & Southern Railway Company, that he was familiar with the class of switching done in all yards in Arkansas, and that all switch engines engaged in switching cars would be engaged in interstate commerce business.

Twenty-sixth. Because the court erred in sustaining the State's motion to strike out the testimony of G. H. Schweer as to the trains operated in the yards of the City of Hot Springs, on the 17th of

June, 1913, being engaged in interstate commerce, as follows:

25 "Q. Take the date you have, June 17, 1913—I want to know whether the cars or trains that were switched here were engaged in interstate business, or not?

A. Yes, sir, I have a list here of the trains, that came in here and freight trains. My first car is merchandise, a car loaded in Little Rock, containing freight from various points, Chicago, St. Louis, Little Rock, Kansas City, etc., now the next car here is a car of hay from Wagoner, Oklahoma, two cars of coal from Illinois; a car of produce from Little Rock. That was the train that came in that morning.

Q. Just have one freight train that day?

A. Yes, sir, and have one out.

Q. How many cars did you have in that freight train?

A. We have five cars.

Q. How many of them had interstate shipments in them?

A. Four, I think.

Q. You had one freight train out only that day?

A. Yes, sir.

Q. How many cars in it?

A. Four cars.

Q. How many of these cars contained interstate shipments?

A. Two I think, probably three. Here is one with merchandise to Little Rock, that probably had merchandise beyond. We usually load all merchandise in Little Rock cars.

Q. Then both the freight trains, one in and one out, were engaged in interstate commerce?

A. Yes.

Q. Take the passenger; you have how many passenger trains in?

A. Three in and three out.

Q. Were they all engaged in interstate commerce?

A. Yes, sir.

The Court: You don't have anything to do with passenger trains, do you?

A. Not particular.

Q. Now the two of those in, was one what was called the Hot Springs Special from St. Louis?

A. Yes, sir, number 17.

Q. That comes from St. Louis here?

A. Yes, sir.

Q. Take the next number?

A. Number 18 going out.

Q. That goes from Hot Springs to St. Louis?

A. Yes, sir.

26 Q. Take the next one?

A. The next one is number 19.

Q. Where does that come from?

A. That came from Kansas City.

Q. To Hot Springs?

A. Yes, sir.

Q. Now what was that train going out?

A. Number 20.

Q. It goes back from Hot Springs to what point?

A. To Kansas City.

Q. Now the other trains?

A. They are Pine Bluff Trains; one comes from Pine Bluff and the other goes out to Pine Bluff.

Q. What is the number?

A. 844 and 843.

Q. Do they make any connection with main line passenger trains at Benton?

A. Yes, sir.

Q. What connection do they make, if you know?

A. Well, I don't know what train they connect with, I think number 4. I am not certain about what trains, about what the numbers of the trains are.

Q. I understand they make connection at Benton with trains going to Texas and also to St. Louis?

A. Yes, sir.

Q. Do passengers travel on that train through Benton and make connection with these through trains?

A. Oh, yes, sir.

Q. Did the switching crew handle the freight trains, the cars you spoke of, on that day?

A. Yes, sir.

Q. What was the total number of cars including the passenger coaches switched in Hot Springs that day?

A. June 17th, fifty cars handled in and out.

Q. How many of these were passengers, I mean passenger trains?

A. Thirty-three.

Q. In other words, on that date the six passenger trains you speak of, or rather the three—there were thirty-three coaches in the passenger trains?

A. Yes, sir, in and out.

Q. And seventeen freight trains?

A. Seventeen cars.

Q. I mean freight cars.

A. Yes, sir.

Twenty-seventh. Because the court erred in sustaining the State's motion to strike out all the testimony of G. H. Schweer as to the manner of handling passenger trains or coaches and the manner in which the switching of passenger trains is conducted in the City of Hot Springs, and as to the manner in which the switching of freight cars is conducted in the yards of Hot Springs, and as to the number of men required to do this work, as follows:

Q. Who gives the orders to the switching crew as to the cars that are to be switched?

A. I give them a switching list.

Q. In other words I understand that every day you give to the switching crew a list of cars that are to be switched in the yards in Hot Springs?

A. Yes.

Q. Have you a record that will show the number of cars as switched in Hot Springs, Arkansas, on the Iron Mountain switch-engines on June 17th, 1913?

A. Yes, sir. I have a list here of the cars that were handled in and out of the station, both passenger and freight cars.

Q. Now take the passenger first. How many passenger trains came in and out of Hot Springs on that date over the Iron Mountain?

A. There was three in and three out, passenger trains.

Q. What was the length of those trains?

A. Well I have here the list. There is four trains with six cars each, one train with five cars and one train with four cars.

Q. Now tell us please how those cars were switched when they came into Hot Springs?

A. Now the yard master takes these cars and pulls them around the Y and switches them back at the shops. He handles them around on the Y; that is all the switching he does here.

Q. In other words as I understand the switch engine takes the entire train?

A. Yes, sir.

Q. When it comes in he takes it out on the Y, turns it around and heads it back the other way and then puts it down to the shops to be cleaned?

A. Yes.

Q. Then what does he do with it?

A. It is not handled any more except the train is put up at the passenger depot to move out.

Q. Does the switch engine put it up at the passenger depot?

A. Yes.

28 Q. Then when the time comes for this train to leave the switch engine takes it and puts it up at the passenger depot?

A. Yes, sir, about an hour or thirty minutes before it leaves.

Q. Then the regular engine is hooked onto it?

A. Yes, sir.

Q. Mr. Schweer, in handling these passenger trains and switching them, you switch them as an entire train?

A. Yes, sir.

Q. And they are pulled over and across a crossing in a switch just as an entire train would be pulled?

A. Yes, sir, with the exception of the engines pushing trains you see; of course the flagman is on the hind end.

Q. That is the engine as I understand pushes the train instead of pulling it; that is the only difference?

A. Yes, sir.

Q. In that case the train is ahead of the engine?

A. Yes.

Q. You say the flagman is placed where?

A. The flagman is placed at the hind end on the rear platform.

Q. Has the company a signal or anything to notify——

A. They have a whistle there; one of those "turn-around" whistles I believe they call it.

Q. Whistle for the crossing?

A. Yes.

Q. How many men compose a switching crew in Hot Springs?

A. Well there is a foreman and two switchmen and an engineer and fireman.

Q. How long has this switching crew been composed of an engineer, a fireman, a foreman and two helpers only?

A. Ever since I have been here, excepting probably during the Fair time we have an extra man.

Q. Except on special occasions?

A. Except on special occasions.

Q. I will ask you if there has ever been any trouble in this regular switching crew handling the work here at this place?

A. No sir, we have had no trouble that I know of.

Q. Is that crew composed of an engineer, fireman, foreman and two switching men, able to do the work here.

A. Yes, sir, in my opinion; they have been doing the work. Of course we have had a night switch engine on.

29 Q. But you have the same crew on that engine?

A. Have the same size crew.

Q. Now have you had any accidents at crossings with this switching crew?

A. I don't recall any.

Q. During the four years that you have been here you don't recall a single accident?

A. I don't recall an accident, no sir.

Q. Now about handling the freight cars that come in here, please tell us how they are switched?

A. Well there are freight cars coming in here to be switched to the different industries in the city; possibly one industry has a car, they will be switched probably one car at a time or two cars or three.

Q. Suppose a train comes in here with fifteen or twenty cars to it, what is done to that train?

A. Well it is pulled in on what we call the alley track, and then it is broken up with the switch.

Q. When you go to break up that train and place these cars, about how many cars does the switch engine handle at a time?

A. It won't average over two at a time on an average.

Q. These cars are taken from the train and carried to the various industries or tracks where they are located?

A. Yes.

Q. And if they are to be unloaded on the common loading track they are put on that are they?

A. Yes, sir.

Q. Then as I understand in handling this freight switching here in Hot Springs the number of cars that the engine would handle each time in breaking up this train would be about one or two cars each time; is that correct?

A. Yes, ordinarily be about two.

Cross-examination by Mr. Witt:

Q. What length of time is consumed in switching a train usually?

A. Well you mean passenger trains?

Q. Yes; we will take the passenger trains.

A. I think it usually takes about twenty minutes.

Q. Would it take any more help or require any more help if there were a dozen coaches than it would if there was five or six?

A. No, sir, I think the same amount of help would do the work just the same.

Q. Then why is it necessary to have an extra helper when you bring in a large train; for instance on Fair days?

A. They have a yard master on Fair days on account of the volume of business. He has to look after the details; that is the reason we have a yard master.

30 Q. Do you know how many different industries that the cars supply here, furnish or accommodate?

A. No, I don't know the number of them. There are different ones located on our tracks. I suppose there is a dozen.

Q. When you speak of three cars coming in and three out does that mean one switching; you had three passenger trains in and three out, does that mean three switchings or six switchings?

A. You have got to switch these trains twice; when they come in have to put the train away, when it went out have to place the train in the passenger depot; have to handle the train twice.

Q. Don't you frequently have an unusual number of freight cars to handle at certain seasons of the year?

A. Of course during certain seasons of the year we have more than others.

Q. On those occasions couldn't that switching be done and these cars handled with better facilities if you had an extra helper?

A. Well it might. Of course I am not able to say on that point.

Q. You couldn't say an extra helper would be unnecessary on these occasions would you?

A. When we have a great deal of heavy business I suppose it would.

By Mr. Kinsworthy:

Q. Mr. Schweer, as I understand, you have an extra man who takes the place of foreman during Fair time. Is that correct?

A. Yes, sir.

Q. He is not a helper with the engine, is he?

A. No, sir.

Q. He doesn't go with the engine and switching crew at all does he?

A. No sir.

Q. In other words, he checks up the yards, sees what work there is to be done and keeps the train dispatcher informed of the amount of work that is necessary?

A. Yes, sir, he directs the work and looks after things.

Q. On those days the same switching crew does the switching that did it on other days don't it?

A. Yes, the same crew.

Q. On ordinary days why you don't need the foreman of the yard to take up this work, but when you have a great deal of it you need him for that purpose?

A. Yes.

Q. Now suppose there were two engines here, two switch engines with switching crews, why this same foreman would do the checking up for both of them wouldn't he?

A. Yes, sir, he would line up the night switch crew.

31 Q. You are familiar with switching terminals?

A. Of course I am not a switchman.

Q. They have a terminal yard master?

A. Yes, sir.

Q. He doesn't have anything to do with the switching of the cars, does he?

A. No, sir, I should think not.

Q. But he just simply directs what work is to be done?

A. Yes.

Q. Now for instance take Little Rock. You might have a terminal yard master and have six engines at work, yet he wouldn't go with any of the engines would he?

A. No, sir.

Q. But he would direct the work to be done by each engine?

A. That is the way I understand it.

Q. And that is what caused this extra man to come here as yard master and not as an extra helper?

A. Yes, as yard master.

Q. He don't go with the engine as a helper?

A. No, sir.

By Mr. Witt:

Q. Who does the work on ordinary days that he does, that this man does on the Fair days?

A. Well the three men. You see the foreman and the two helpers, they do that work."

Twenty-eight. Because the court erred in overruling defendant's motion to strike from the record and to instruct the stenographer not to copy any of the testimony in regard to a letter witness Mellard wrote to Mr. Mayne, superintendent at Little Rock.

Twenty-ninth. Because the court erred in permitting the State's counsel to ask witness Mellard each of the following questions over the objection of the defendant, and in permitting the witness to answer each of said questions over the objection of the defendant:

32 "Q. Did you ever in the last three months, have a conversation with L. H. Tanner, night yard master in Argenta, relative to the rules of the Railway Company in doing switching?

A. I have had a conversation with both of our night yard masters, Mr. Tanner and Mr. Clary, in regard to violation of special instructions in dropping cars.

Q. Did you ever have any conversation with the night yard master, Mr. L. H. Tanner, relative to the manner in which you carry on switching in Argenta yards?

A. Yes, sir.

Q. What did Mr. Tanner tell you at that time?

A. He said I had been railroading long enough to know that we couldn't successfully run a railroad and live up to all the rules, and I ought to have better sense."

Thirtieth. Because the Court erred in permitting the State's counsel to ask witness Mellard each of the following questions over the objection of the defendant and in permitting the witness to answer each of the following questions over the objection of the defendant:

"Q. Have you, or have you not, observed other crews dropping cars over public crossings in Argenta and Little Rock?

A. Yes, every day.

Q. Tell the court, Mr. Mellard, how frequently is that an occurrence?

A. It is a daily occurrence."

Thirty-first. Because the Court erred in refusing to strike out the above testimony of witness Mellard contained in the above questions and answers.

Thirty-second. Because the court erred in permitting the State's counsel to ask witness Mellard the following questions, over the objection of the defendant, and in permitting said witness to
33 answer same over the objection of defendant:

"Q. Have you or have you not observed them dropping cars across Main Street in Argenta in the last week, to keep from making a non-air?

A. Now I don't remember that exactly; I know they dropped it over there; I don't know why."

Thirty-third. Because the court erred in permitting the State's counsel to ask witness R. D. Carter each of the following questions over the objection of the defendant, and in permitting the witness

to answer each of the said questions over the objection of the defendant:

"Q. Mr. Carter, I want to ask you: Have you ever, in the last three months or six months, made a request of any official, or Mr. Brown, to put down what is known as a crossing track near Rock Street in east Little Rock yards, to keep from dropping cars there at the crossing?

A. Yes, I asked Mr. Brown to see if he couldn't put a cross-over switch there to save us from dropping cars over the crossing there.

Q. Did he comply with your request?

A. No, sir; he said it would take a considerable expense, said they would have to raise the main line on a level with the house lead."

Thirty-fourth. Because the Court erred in permitting the State's counsel to ask witness J. E. Phillips each of the following questions, over the objection of the defendant, and in permitting said witness to answer each of same, over the objection of the defendant:

"Q. Did you ever make a request of yard master Brown or road master Strople to put in a cross-over track at Rock Street in Little Rock so as to make it unnecessary to perform or to drop cars across the public crossing?

34 A. I didn't exactly make a request; I just mentioned it to them; told them it would be a good idea and would save dropping so many cars there.

Q. What answer did they give you?

A. The road master said it was not on a level with Rock Street?

Q. Said what?

A. Said the main line was not on a level with the house lead and the main line would have to be raised in order to get off the switch in Rock Street, for it to be done.

Q. Did they ever put it in?

A. No, sir."

Thirty-fifth. Because the court erred in refusing to find the law and facts as requested by defendant, in its request numbered 1.

Thirty-sixth. Because the court erred in refusing to find the law and facts as requested by defendant, in its request numbered 2.

Thirty-seventh. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 3.

Thirty-eighth. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 4.

Thirty-ninth. Because the court erred in refusing to find the law and facts as requested by defendant, in its request numbered 5.

35 Fortieth. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 6.

Forty-first. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 7.

Forty-second. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 8.

Forty-third. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 9.

Forty-fourth. Because the court erred, after hearing the evidence, in finding against the defendant on the fifth count and defense set up in defendant's special plea.

Forty-fifth. Because the court erred, after hearing the evidence, in finding against the defendant on the sixth count and defense set up in defendant's special plea.

Forty-sixth. Because the court erred in finding against the defendant on each and every one of its defenses set up in its special plea.

Forty-seventh. Because the court erred in holding that the
36 burden was on the defendant to sustain its defense under counts five and six of its defense set up in its special plea.

Forty-eighth. Because the finding and verdict of the court to the effect that the defendant was guilty of the charges set forth in the information in this case is contrary to the law.

Forty-ninth. Because the finding and verdict of the court to the effect that the defendant was guilty of the charges set forth in the information in this case is contrary to the evidence.

Fiftieth. Because the finding and verdict of the court to the effect that the defendant was guilty of the charges set forth in the information in this case is contrary to the law and the evidence.

Wherefore, the defendant prays that the verdict and judgment rendered herein be set aside and that it be granted a new trial and for all other proper relief as it may be entitled.

E. B. KINSWORTHY,
Attorney for Defendant.

Filed April 27th, 1914. A. G. Sullenberger, Clerk. By W. H. Moyston, D. C.

37 Be it remembered, That at a regular Term of the Garland Circuit Court begun and held at the Court House in the City of Hot Springs, Garland County, Arkansas, on Monday, March 24th, 1913, and thereafter on the 1st day of July, 1913, said day being a regular day of said Term of said Court, there was present and presiding the Honorable C. T. Cotham, Judge of the 18th Judicial District of Arkansas, of which Garland County forms a part, and before whom the following among other proceedings were had, to-wit:

3043.

STATE OF ARKANSAS, Plaintiff,
vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

On this day comes the defendant by its attorney, E. B. Kinsworthy, Esqr., and files its demurrer herein.

On July 5th, 1914.

No. 3043.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Demurrer Overruled.

On this day comes the parties, and the defendant's demurrer to the information is submitted to the Court for consideration and judgment, and the Court being well and sufficiently advised, does consider, order and adjudge that the demurrer be, and is overruled, to which action of the Court the defendant asked that its exceptions be entered of record, which is accordingly done. And after the overruling of its demurrer the defendant now files its special plea to the information.

38

On December 15th, 1913.

No. 3043.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

On this day comes the State of Arkansas by her prosecuting attorney, Gibson Witt, Esqr., and comes the defendant by its attorney, E. B. Kinsworthy, Esqr., and by agreement and consent this cause is continued until the fourth Monday in March, 1914.

Be it remembered, That at a regular Term of the Garland Circuit Court begun and held in the Court house, in the City of Hot Springs, Garland County, Arkansas, on Monday, March 23rd, 1914, and thereafter, on the 4th day of April, 1914, there was present and presiding the Honorable C. T. Cotham, Judge of the 18th Judicial District of Arkansas, of which Garland County forms a part, and before whom the following among other proceedings were had, to-wit:

No. 3043.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Ruling on Demurrer.

On this day comes the parties hereto, plaintiff and defendant by their respective attorneys, and there is submitted to the Court for

its consideration and judgment the plaintiff's demurrer to paragraph one, two, three and four, of defendant's special plea, and after hearing argument of counsel for both parties, the Court being sufficiently advised it is by the Court considered, ordered and adjudged that the said demurrer be, and is sustained to one of the defendant's special plea, in so far as said paragraph alleges that the train and switching crew which was being operated by defendant in the commission of the alleged offense was then and there engaged in interstate commerce, and that the statute alleged to have been violated herein has no application to said train and crew and said demurrer to said paragraph one is overruled as to all other allegations therein. And it is by the Court further considered, ordered, and adjudged that plaintiff's demurrer to paragraph two, three and four of defendant's special plea be, and is hereby sustained. To which ruling of the Court in sustaining the demurrer to the aforesaid parts of paragraph one of the defendant's special plea and to paragraphs two, three and four of said special plea the defendant at the time asked that its several and separate exceptions be noted of record which is hereby done; Defendant declined to plead further as to its paragraphs one, two, three and four of its said special plea.

It is considered, ordered and adjudged by the Court that said paragraphs two, three and four and all those aforesaid portions of paragraph one of said special plea to which was sustained be, and they are hereby overruled and dismissed, to which ruling of the court in overruling and dismissing said paragraphs two, three and four of the aforesaid portions of paragraph one of the defendant's special plea, defendant asked that its separate and several exceptions be noted of record which is hereby done.

And thereafter, on the 4th day of April, 1914, the following among other proceedings were had, to-wit:

No. 3043.

STATE OF ARKANSAS, Plaintiff,

vs.

St. Louis, I. M. & S. Ry. Co., Defendant.

Ruling on Demurrer.

On this day comes the parties hereto, plaintiff and defendant by their respective attorneys, and there is submitted to the Court for its consideration and judgment, the plaintiff's demurrer to paragraph one, two, three and four, of defendant's special plea, and after hearing argument of counsel for both parties the court being sufficiently advised, it is by the court considered, ordered and adjudged that the said demurred be, and is sustained to — one of the defendant's special plea, in so far as said paragraph alleges that the train and switching crew which was being operated by defendant in the commission of the alleged offense was then and there

engaged in interstate commerce, and that the statute alleged to have been violated herein has no application to said train and crew and said demurrer to said paragraph one is overruled as to all other allegations therein, and it is by the court further considered, ordered and adjudged that plaintiff's demurrer to paragraph- one, two, three and four of defendant's special plea be, and is hereby sustained to which ruling of the court in sustaining the demurrer to the aforesaid parts of paragraph one of the defendant's special plea and to paragraphs two, three and four of said special plea of defendant at the time asked that its several separate exception be noted of record which is hereby done; defendant declined to plead further as to its paragraphs one, two, three and four

41 of its said special plea, it is considered, ordered and adjudged by the court that said paragraphs two, three and four, and all those aforesaid paragraphs of paragraph one of said special plea to which was sustained be, and they are hereby overruled and dismissed, to which rulings of the Court in overruling and dismissing said paragraphs two, three and four, and the aforesaid portions of paragraph one of the defendant's special plea; defendant asked that its separate and several exceptions be noted of record which is hereby done.

And thereafter, on April 27th, 1914, the following among proceedings were had, to-wit:

No. 3043.

STATE OF ARKANSAS, Plaintiff,
vs.
ST. L., I. M. & S. RY. Co., Defendant.

Motion for New Trial Overruled.

The Court therefore, on the date of the verdict and judgment in this case, having granted the defendant thirty days in which to file its motion for new trial, now on this date within the time allowed by the court, comes the defendant, the St. Louis, Iron Mountain & Southern Ry. Co., by its attorney, E. B. Kinsworthy, Esqr., and files its motion for a new trial in this cause, and the same coming on to be heard and the Court being well and sufficiently advised in the premises, doth overrule said motion, to which action of the court in overruling said motion, and in refusing to grant the defendant a new trial herein the defendant saves its exceptions and prays an appeal to the Supreme Court, which is granted, and the defendant is given 60 days within which to prepare, tender,

42 and file its bill of exceptions and the fine imposed herein is suspended for 60 days from this date.

43 In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Bill of Exceptions.

Be it remembered, that the above entitled cause coming on for trial on this 4th day of April, 1914, before the Honorable C. T. Cotham, Judge of the Garland Circuit Court, sitting as a jury, and the State duly appearing by Gibson Witt, Prosecuting Attorney, and William D. Jackson and Gus W. Jones, Esquires, and the defendant appearing by E. B. Kinsworthy, Esquire, and both sides announcing ready for trial, the following evidence was introduced, exceptions saved, all requests for special findings as to the law and facts offered and refused, and proceedings had, as follows, to-wit:

44 Morning Session, April 4, 1914.

Mr. Kinsworthy: I would like to read the Act first.
(Act No. 67, p. 211, Acts of 1913, read as follows:)

"Act No. 67.

An Act for the Better Protection and Safety of the Public.

Be it enacted by the General Assembly of the State of Arkansas; be it enacted by the people of the State of Arkansas:

Section 1. That no railroad company or corporation owning or operating any yards or terminals in the cities within this State, where switching, pushing or transferring of cars are made across public crossings within the city limits of the cities shall operate their switch crew or crews with less than one engineer, a fireman, a foreman and three helpers.

Section 2. It being the purpose of the Act to require all railroad companies or corporations who operate any yards or terminals within this State who do switching, pushing or transferring of cars across public crossings within the city limits of the cities to operate said switch crew or crews with not less than one engineer, a fireman, a foreman and three helpers, but nothing in this Act shall be so construed as to prevent any railroad company or corporation from adding to or increasing their switch crew or crews beyond the number set out in this Act.

Section 3. The provisions of this Act shall apply only to cities of the first and second class and shall not apply to the railroad companies or corporations operating railroads less than one hundred miles in length.

45 Section 4. Any railroad company or corporation violating the provisions of this Act shall be fined for each separate

offense not less than fifty dollars, and each crew so illegally operated shall constitute a separate offense.

Section 5. This Act shall take effect and be in force after May 1st, 1913.

Approved February 20, 1913.

Mr. Kinsworthy: I will state to the court there is an engineer and fireman in each crew, and in addition, this Act requires four men to go with the engine, while the road only formerly used two switchmen and a foreman.

The Court: It requires one additional man?

Mr. Kinsworthy: Yes, sir.

(Information read to the court as follows:)

"In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Information.

Comes Gibson Witt, Prosecuting Attorney for the Eighteenth Judicial Circuit of Arkansas and files information against the defendant, the St. Louis, Iron Mountain & Southern Railway Company, and alleges that said company is a railroad corporation operating a railroad in Garland County, Arkansas, more than 100 miles in length, and that the city of Hot Springs, in said
46 county and State, is a city of the first class; that on the 17th day of June, 1913, said defendant owned and operated yards and terminals in said city where switching, pushing and transferring of cars are done across public crossings within the limits of said city; that on said day defendant operated a certain switch crew with less than the number of men required by law, that is, less than one engineer, a fireman, a foreman and three helpers, and switched, pushed and transferred certain cars across certain streets in said city, in violation of the statute in such cases made and provided.

GIBSON WITT,

Prosecuting Attorney, 18th Judicial Circuit."

(Special plea of the defendant to the Information read as follows)

"In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Comes the defendant, and, without waiving its demurrer herein, for its special plea herein alleges:

1.

It admits that it is a railroad corporation operating a railroad in Garland County, Arkansas, which is more than 100 miles in length; and that the city of Hot Springs, in said County and
47 State, is a city of the first class.

Defendant admits that on the 17th day of June, 1913, it operated and ran a certain freight train, No. —, Engine No. —, and that on said date it was engaged in switching cars across a certain public crossing within the city limits of the city of Hot Springs, and that while doing so it operated a certain switch crew composed of 1 engineer, a fireman, a foreman, and two helpers, and no more.

Defendant states that said train was at the time engaged in Interstate Commerce, and defendant denies that it violated Act No. 67, of the General Assembly of the State of Arkansas, approved February 20, 1913, and denies that such Act was applicable to the above switch crew.

2.

For further defense, defendant alleges that said Act is unconstitutional, because section 3 thereof exempts from its application all railroad companies operating railroads less than 100 miles in length. Defendant alleges that there are several railroad companies in this State operating less than 100 miles in length which do switching of cars across public roads within the State. Defendant alleges that said Act is unconstitutional and in conflict with Section 1, of the 14th Amendment of the Constitution of the United States, in depriving this defendant of the equal protection of the laws.

3.

Defendant alleges that Section 4 of said Act is void in that it imposes a penalty of not less than \$50.00, for each separate offense, but imposes no maximum penalty, the effect being to render
48 the defendant liable to excessive fines within the prohibition of Section 9 of Article 2 of the Constitution of Arkansas, prohibiting the imposition of cruel and unusual punishment.

4.

Defendant alleges that said Act is void in imposing an unreasonable burden upon this defendant in violation of Section 1 of the

14th Amendment of the Constitution of the United States, which provides that no State shall deprive any person of property without due process, nor deny to any person within its jurisdiction the equal protection of the law, and that, under the provisions of said act, this defendant is only allowed a hearing upon the question of alleged violations of the statute at the risk, if mistaken, of being subjected to such enormous penalties as to result in the confiscation of its entire property, and so excessive and enormous as to, in effect, prohibit this defendant from seeking judicial determination of matters which deeply affect its rights and property, all in violation of Section 1 of Article 14, of the Articles in Amendment of the Constitution of the United States.

5.

The defendant alleges that said Act imposes an unnecessary and unreasonable burden on the defendant and deprives it of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, which
49 provides that no State shall deprive any person of life, liberty or property without due process of law.

6.

The requirement of said statute, that defendant shall operate its switching crews in cities, with not less than six men, is arbitrary and unreasonable and there is no public necessity for such a requirement. The protection and safety of the public does not require the operation of said crews with six members. Two helpers in addition to a foreman, an engineer and a fireman are amply sufficient to operate and do the work required of switching crews in cities of the first and second class, with promptness, efficiency and safety to the public and to the employees. The employment of an extra switchman or helper, as required by this Act imposes a burden upon this defendant which is arbitrary and unreasonable and unnecessary, and from which neither defendant nor the public receives any benefit; the employment of such extra switchmen will add an expense of approximately eight thousand dollars per month to the defendant's pay roll in the State of Arkansas, for which expenditure it will receive no corresponding benefit, nor will the safety or protection of the public be promoted or advanced thereby. All the duties connected with or necessary to the movement of cars and freight in the switching operations conducted by defendant in the cities of the first and second class in the State of Arkansas have been performed and can be performed by five men, being a foreman, an engineer and fireman, and two helpers, with no more
50 hazards to the public or defendant's employees than is necessarily incident to such operations however conducted. there is no work for the additional helper required by said statute to do which cannot be done and which is not being done already with reasonable safety to the public and defendant's employees by the members of such crews as operated by defendant prior to

the passage of the statute. Said statute therefore requires defendant to pay a large sum of money to employees whose services it does not need and which are of no value to defendant, which is an arbitrary and unreasonable requirement and thereby deprives the defendant of its property without due process of law, and denies to defendant the equal protection of the law, contrary to the provisions of Section 1 of Article 14 of the Articles in amendment of the Constitution of the United States.

Wherefore defendant prays that the court investigate this its special plea, and upon hearing thereof that it find and adjudge that the statute aforesaid is invalid and of no effect, and that defendant is not guilty of violation thereof.

E. B. KINSWORTHY,

R. E. WILEY,

Attorneys for Defendant."

51 Whereupon, the State by its counsel, filed a demurrer to defendant's special plea, which is in words and figures as follows:

"In the Garland County Circuit Court.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Demurrer.

Comes the plaintiff by Gibson Witt, Prosecuting Attorney, for the Eighteenth Judicial Circuit, and Jackson & Jones and demurs to paragraphs numbered One, Two, Three and Four of the defendant's answer and for cause states that same do not present a defense to the plaintiff's information filed herein.

Wherefore, plaintiff prays for judgment.

GIBSON WITT,

Pros. Atty.

After an argument at length by counsel for the respective parties, the court took the matter under advisement until 1:30 p. m.

Whereupon, an adjournment was taken until 1:30 p. m.

52

Afternoon Session.

The Court: A demurrer was presented to the court this morning, to the special plea of the defendant filed in this case, the demurrer applying especially to paragraphs numbered 1, 2, 3, and 4 of defendant's answer.

With reference to the demurrer to paragraph one of the special plea filed by the defendant, the court will sustain the demurrer to

this paragraph of the answer in so far as it sets up the defense that said train was at the time engaged in interstate commerce, but will overrule it in so far as it applies to all other parts of said paragraph.

The Court sustains the demurrer to paragraphs numbered 2, 3 and 4 of defendant's answer, and you may save your exceptions.

Mr. Kinsworthy: The defendant excepts to the action of the court in sustaining the demurrer to that part of paragraph 1 of defendant's special plea in so far as it refers to the defense that the train was engaged in interstate commerce. The defendant excepts separately to the action of the court in sustaining the demurrer to each of the paragraphs in the special pleas numbered 2, 3 and 4.

The Court: All right.

Mr. Kinsworthy: I understand the court sustains the demurrer to all of the paragraphs except 5 and 6.

The Court: Yes, sir, with the exception I made in number 1.

53

Agreement of Counsel.

In addition to the special plea, defendant enters a plea of not guilty, and by consent of both parties a jury is waived and both the special plea and plea of not guilty are submitted to the court.

Thereupon, before the taking of the testimony began, the following agreement was entered into by the respective counsel:

"It is admitted by the defendant that Hot Springs is a city of the first class, and that the defendant is a railroad corporation operating a railroad in Garland County, Arkansas, of more than one hundred miles in length, and that the defendant did on the 17th day of June, 1913, operate a yard and terminal in said city where it did switching, pushing and transferring of cars across public streets within the limits of said city of Hot Springs, and that on said date it operated a certain switching crew with less than the number of men mentioned in the Act No. 67, of the Acts of the General Assembly of 1913, approved February 20, 1913, and found on pages 211 and 212 of the Acts of the General Assembly of Arkansas for 1913, in that on said date the defendant operated a switching crew with an engineer, a fireman, a foreman and two helpers, and no more, and that said switching crew did switch cars across public crossings in the City of Hot Springs on said date, but the defendant contends that the law above mentioned is unconstitutional and void on the grounds set up in the defendant's special plea, and for that reason denies that it is guilty of any offense."

With this agreement and admission the State rested her case.

Thereupon the defendant introduced the following testimony:

54

Testimony of E. M. Wise.

E. M. Wise, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By E. B. Kinsworthy:

Q. What is your name?

A. E. M. Wise.

Q. Where do you live, Mr. Wise?

A. Harrison, Arkansas.

Q. What is your business?

A. General Manager of the Missouri & North Arkansas Railroad.

Q. How long have you been in the railroad business?

A. About 23 years.

Q. How long have you been manager of the Missouri and North Arkansas Railroad?

A. About two and a half years.

Q. In what capacity have you acted as a railroad man?

A. Well, as an agent, an operator, a claim agent, Terminal Superintendent, Superintendent, General Superintendent, Vice President and General Manager, Assistant to the President.

Q. You say you acted as Superintendent of Terminals?

A. Yes, sir.

Q. I will ask you in acting as Superintendent of Terminals whether you had charge of the switching yards?

A. I did.

Q. How long did you act as such?

A. I was in Terminal work I should say about four years.

55 Q. For what company?

A. For the National Railways of Mexico it is now.

Q. In Mexico?

A. Yes, sir.

Q. How long a railroad is the Missouri and North Arkansas?

A. 359 miles.

Q. Where does it begin and where does it end?

A. Joplin, Missouri, to Helena, Arkansas.

(It is agreed that Helena, Arkansas is a city of the first class.)

The Witness: Helena has about eighteen thousand inhabitants.

Q. About what is the size of the town of Helena, Mr. Wise?

A. I think about eighteen thousand.

Q. In doing your switching at Helena, how is it done?

A. Why under a joint arrangement with the Louisiana, New Orleans and Texas Railroad Company.

Q. Please state what kind of an arrangement you have with the Louisiana, New Orleans and Texas Railroad Company to do your switching at Helena in Arkansas?

A. We have a joint arrangement. Well our yards are located

out of Helena. To get into Helena, we are compelled to use their terminal, and the expense of this terminal operation is borne on the wheelage basis.

Q. Then as I understand, you not only use the yards and terminals—

A. But we use the station facilities also.

Q. Then as I understand, you not only use the yard and
56 terminals of the L. N. O. & T. Railroad Company, but you use their station facilities, and all of the freightage that you bring into Helena that has to be switched to any point in the City of Helena, that your cars are switched by the L. N. O. & T. Railroad Company?

A. It is.

Q. How long a railroad is the Louisiana, New Orleans and Texas Railroad?

A. Now I cannot give you that accurately, but I think they have close to four miles of track in Arkansas.

Q. Four miles of main line; do you mean that?

A. Well it is a terminal.

Q. Then as I understand they own no road at all except that part of it lying in Helena?

A. As I understand it. You see they serve Helena. Their station is located in Helena and these tracks are necessary to take care of the business on this side of the River. They have no facilities whatever on the Mississippi side of the River.

Q. What other switching does that road do in Helena besides yours?

A. I don't know of any other.

Q. Take the Mississippi and Yazoo Railroad Company; does it connect with that?

A. The L. N. O. & T. Railroad Company, yes, sir.

Q. Doesn't it handle all of its cars that come into Helena?

A. Yes, sir.

Q. Doesn't it switch all of its cars which come into Helena?

57 A. It does.

Q. How long is the Yazoo, Mississippi and Valley Railroad?

A. The Yazoo and Mississippi Valley; I don't know their exact mileage.

Q. Well approximately?

A. I should say seven hundred miles.

Q. Then as I understand—anyway it is a great deal more than a hundred miles?

A. The Yazoo and Mississippi Valley, yes, sir.

Q. Then as I understand, the Louisiana, New Orleans and Texas Railroad Company, which has about four miles of road all told, does the switching both for the Missouri and North Arkansas and the Yazoo and Mississippi Valley Railroad Company into Helena?

A. It does.

Q. The amount of the switching done for these two companies

by this L. N. O. & T. Railroad Company in comparison with the amount of the Iron Mountain, how would it be?

A. Well I cannot say. If Mr. Dean will give me a little information I can give it to you approximately. Now we employ two switch engines a day there to perform this service. Now proportionately to the number that the Iron Mountain employs there, I suppose that would be about the nearest correct ratio you could get.

Q. Do you know or have any idea of the relative amount of business done by your company and the Yazoo and Mississippi Valley when compared to that of the Iron Mountain in Helena?

58 A. The earnings or the amount of switch engines employed?

Q. The amount of switching done?

A. Well I don't know, but I should say that the ratio would be about three to two on what Mr. Dean has just stated. They employ three switch engines and we employ two. Using a total of five, the Iron Mountain uses three and we use two.

Q. That is the L. N. O. & T. Railway Company will do two-fifths of all the switching done in Helena?

A. I should say so.

Q. And the Iron Mountain would do three-fifths?

A. Yes, sir.

Q. Do you know how many that the L. N. O. & T. Railroad Company have in its switching crew?

A. They have five.

Q. Name them?

A. The engineer, fireman, foreman, and two switchmen—helpers.

Q. You mean helpers?

A. Helpers, yes, sir.

Q. Do you know whether you have any trouble in handling switching there with that crew?

A. We do not.

Q. I will ask you from your experience and from your knowledge of the cities of the first and second class in the State of Arkansas, is a crew of an engineer, a fireman, a foreman and two helpers sufficient to do the switching with perfect safety to the public?

59 A. Yes, sir, I consider it so.

Q. Is it sufficient to do it with safety to the employees?

A. I consider it so.

Mr. Witt: I object to that. That would call for a conclusion.

Mr. Kinsworthy: I am asking him as an expert.

The Court: The real objection I see to the question is it is not whether it would be sufficient in some other places, but whether it is sufficient in Hot Springs under the law. I suppose for the purpose of getting a test on the law it might be asked.

Exceptions are noted.

Q. I understand you to say that the Louisiana, New Orleans and Texas Railway Company at Helena have in their switching crew an engineer, a fireman, a foreman and two helpers, and no more. I will ask you if an additional man should be added to that force,

would it in any way facilitate the handling of cars or switching cars as to the safety of either the public or the employees?

A. I don't consider that it would. On the contrary, I think if you add the fourth man you impair the efficiency of the service because there is only work for three men. Any business that you get over-crowded with men why the average is always used to the detriment of the others that could be used in the organization advantageously.

Q. Have you any cities of the first class that you reach outside of Helena, in Arkansas, where you have to use three helpers?

60 A. We have not.

Q. How many crossing- do you switch over in Helena, if you know, that is the road that does your switching?

A. Well between six and ten street crossings, but I wouldn't like to say definitely how many. That is my idea that it is between six and ten street crossings.

Q. In other words you know there is quite a number of them?

A. Yes, sir.

Q. Do you know whether any of them are protected by bells or flags or each?

A. No. I think the Iron Mountain has one right at their station there. (A person other than the witness here gives some information as to the Iron Mountain).

Q. That is the Iron Mountain have three street crossings protected by their flagmen or gates, but the Louisiana, New Orleans and Texas have none protected?

A. No; if so, I don't know it.

Cross-examination:

By Mr. Witt: The State moves to exclude the evidence of the witness for the reason that conditions at Helena throw no light upon conditions in Hot Springs, and because of the irrelevancy and immateriality.

The Court: The motion is denied.

To which ruling of the Court the State at the time excepted and asked that her exceptions be noted of record, which was

61 accordingly done.

Q. You may explain if you will what you mean by a wheelage basis?

A. Well that is getting at the manner in which the operating expenses of the terminal is proportioned between the respective tenant lines. By a wheelage basis is meant this: Suppose the Y. & M. V. delivers to this terminal one thousand cars every month and the Missouri and North Arkansas Railroad delivers two cars every month—two thousand cars every month; then in prorating the expenses, the Missouri and North Arkansas would pay two dollars and the Yazoo and Mississippi Valley would pay one; pay in proportion to the amount or the number of cars that each line handles in and out of the terminal.

Q. Is that similar to the system in Hot Springs?

A. Well now I don't know. Of course there is no charge like that I imagine in Hot Springs because there is only one line, that is the Iron Mountain.

Q. Are you familiar or do you know the amount of switching done in Hot Springs?

A. No sir, I do not. I have an idea more or less about the amount of work, but anything accurately I don't know.

Witness excused.

62

Testimony of G. H. Schweer.

G. H. SCHWEER, of lawful age, being duly sworn and examined as a witness on behalf of defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. G. H. Schweer.

Q. Where do you live, Mr. Schweer?

A. Hot Springs.

Q. What is your occupation?

A. Agent for the Iron Mountain.

Q. You mean depot agent?

A. Yes, or Freight Agent.

Q. You are the local Freight Agent?

A. I am the Local Freight Agent, yes.

Q. In your position what do you have to do?

A. Well, of course, I look after all of their freight business you know, pertaining to the City of Hot Springs.

Q. Do you handle all of the freight that comes in and goes out of here?

A. Yes, sir, under my supervision.

Q. Do you keep a record of the cars that come in and go out of the station?

A. Yes.

Q. Who gives the orders to the switching crew as to the cars that are to be switched?

A. I give them a switching list.

Q. In other words, I understand that every day you give to the switching crew a list of cars that are to be switched in the yards in Hot Springs?

63

A. Yes.

Q. Have you a record that will show the number of cars as switched in Hot Springs, Arkansas, on the Iron Mountain, on the Iron Mountain switch engine on June 17, 1913?

A. Yes, sir, I have a list here of the cars that were handled in and out of the station, both passenger and freight cars.

Q. Now take the passengers first. How many passenger trains came in and went out of Hot Springs on that date over the Iron Mountain?

A. There was three in and three out, passenger trains.

Q. What was the length of those trains?

A. Well, I have here the list. There is four trains with six cars each, one train with five cars and one train with four cars.

Q. Now tell us please how these cars were switched when they came into Hot Springs?

A. Now the Yardmaster takes these cars and pulls them around the Y and switches them back on the track at the shops. He handles them around on the Y; that is all the switching he does here.

Q. In other words as I understand the switch engine takes the entire train?

A. Yes, sir.

Q. When it comes in he takes it out on the Y, turns it around and heads it back the other way and then puts it down to the shops to be cleaned?

64 A. Yes.

Q. Then what does he do with it?

A. It is not handled any more except the train is put up at the passenger depot to move out.

Q. Does the switch engine put it up at the passenger depot?

A. Yes.

Q. Then when the time comes for this train to leave the switch engine takes it and puts it up at the passenger depot?

A. Yes, sir, about an hour or thirty minutes before it leaves.

Q. Then the regular engine is hooked on to it?

A. Yes, sir.

Q. Mr. Schweer, in handling these passenger trains and switching them, you switch them as an entire train?

A. Yes, sir.

Q. And they are pulled over and across a crossing in a switch just as an entire train would be pulled?

A. Yes, sir; with the exception of the engine pushing trains you see; of course, the flagman is on the hind end.

Q. That is, the engine, as I understand, pushes the train instead of pulling it; that is the only difference?

A. Yes, sir.

Q. In that case the train is ahead of the engine?

A. Yes.

Q. You say the flagman is placed where?

A. The flagman is placed at the hind end on the rear platform.

Q. Has the Company a signal or anything to notify—

65 A. They have a whistle there; one of those "Turn around" whistles I believe they call it.

Q. Whistle for the crossing?

A. Yes.

Q. How many men compose a switching crew in Hot Springs?

A. Well there is a foreman and two switchmen and an engineer and fireman.

Q. How long has this switching crew been composed of an engineer, a fireman, a foreman, and two helpers only?

A. Ever since I have been here, excepting probably during the Fair time we have an extra man.

Q. Except on special occasions?

A. Except on special occasions.

Q. I will ask you if there has ever been any trouble in this regular switching crew handling the work here at this place?

A. No, sir. We have had no trouble that I know of.

Q. Is that crew composed of an engineer, fireman, foreman and two switching men, able to do the work here?

A. Yes, sir, in my opinion; they have been doing the work. Of course we had had a night switch engine on.

Q. But you have the same crew on that engine?

A. Have the same size crew.

Q. Now have you had any accidents at crossings with this switching crew?

A. I don't recall any.

Q. During the four years that you have been here, you don't recall a single accident?

66 A. I don't recall an accident, no, sir.

Q. Now about handling the freight cars that come in here, please tell us how they are switched?

A. Well, there are freight cars coming in here to be switched to the different industries in the city; possibly one industry has a car, they will be switched probably one car at a time or two cars or three.

Q. Suppose a train comes in here with fifteen or twenty cars to it, what is done to that train?

A. Well, it is pulled in on what we call the alley track, and then it is broken up with the switch.

Q. When you go to break up that train and place these cars, about how many cars does the switch engine handle at a time?

A. It won't average over two at a time on an average.

Q. These cars are taken from the train and carried to the various industries or tracks where they are located?

A. Yes.

Q. And if they are to be unloaded on the common loading track, they are put on that are they?

A. Yes, sir.

Q. Then as I understand in handling this freight switching here in Hot Springs, the number of cars that the engine would handle each time in breaking up this train would be about one or two cars each time, is that correct?

A. Yes, ordinarily be about two.

Q. Take the date you have, June 17, 1913—I want to know whether the cars or trains that were switched here were engaged in interstate business or not?

67 A. Yes, sir; I have a list here of the trains that came in here and freight trains. My first car here is merchandise, a car loaded in Little Rock containing freight from various points, Chicago, St. Louis, Little Rock, Kansas City, etc. Now the next car here is a car of hay from Wagoner, Oklahoma. Two cars of coal from Illinois; a car of

produce from Little Rock. That was the train that came in that morning.

Q. Just have one freight train that day?

A. Yes, sir, and have one out.

Q. How many cars did you have in that freight train?

A. We had five cars.

Q. How many of them had interstate shipments in them?

A. Four I think.

Q. You had one freight train out only that day?

A. Yes, sir.

Q. How many cars in it?

A. Four cars.

Q. How many of these cars contained interstate shipments?

A. Two I think, probably three. Here is one with merchandise to Little Rock; that probably had merchandise beyond. We usually load all merchandise in Little Rock cars.

Q. Then both the freight trains, one in and one out, were engaged in interstate commerce?

A. Yes.

68 Q. Take the passenger—you have how many passenger trains in?

A. Three in and three out.

Q. Were they all engaged in interstate commerce?

A. Yes, sir.

The Court: You don't have anything to do with passenger trains, do you?

A. Not particular.

By Mr. Kinsworthy:

Q. Now the two of those in, was one what was called the Hot Springs Special from St. Louis?

A. Yes, sir.

Q. That comes from St. Louis here?

A. Yes, sir.

Q. Take the next number?

A. Number 18 going out.

Q. That goes from Hot Springs to St. Louis?

A. Yes, sir.

Q. Take the next one?

A. The next one is number 19.

Q. Where does that come from?

A. That came from Kansas City.

Q. To Hot Springs?

A. Yes, sir.

Q. Now what was that train going out?

A. Number 20.

Q. It goes back from Hot Springs to what point?

A. To Kansas City.

Q. Now the other trains?

69 A. They are Pine Bluff Trains; one come from Pine Bluff and the other goes out to Pine Bluff.

Q. What is the number?

A. 844 and 843.

Q. Do they make any connection with main line passenger trains at Benton?

A. Yes, sir.

Q. What connection do they make, if you know?

A. Well, I don't know what train they connect with, I think number 4. I am not certain about what trains, about what the number of the trains are.

Q. I understand they make connection at Benton with trains going to Texas and also to St. Louis?

A. Yes, sir.

Q. Do passengers travel on that train through Benton and make connection with these through trains?

A. Oh, yes, sir.

Q. Did the switching crew handle the freight trains, the cars you spoke of, on that day?

A. Yes, sir.

Q. What was the total number of cars including the passenger coaches switched in Hot Springs that day?

A. June 17th, fifty cars handled in and out.

Q. How many of these were passengers, I mean passenger trains?

A. Thirty-three.

Q. In other words, on that date, the six passenger trains you speak of, or rather the three—there were thirty-three coaches in the passenger trains?

70 A. Yes, sir, in and out.

Q. And seventeen freight trains?

A. Seventeen cars.

Q. I mean freight cars?

A. Yes.

Cross-examination.

By Mr. Witt:

Q. What length of time is consumed in switching a train usually?

A. Well, you mean passenger trains?

Q. Yes; we will take the passenger trains?

A. I think it usually takes about twenty minutes.

Q. Would it take any more help or require any more help if there were a dozen coaches than it would if there was five or six?

A. No, sir, I think the same amount of help would do the work just the same.

Q. Then why is it necessary to have an extra helper when you bring in a large train; for instance on Fair days?

A. They have a Yardmaster on Fair days on account of the volume of business. He has to look after the details; that is the reason we have a Yardmaster.

Q. Do you know how many different industries that the cars supply here, furnish or accommodate?

A. No, I don't know the number of them. There are different ones located on our tracks. I suppose there is a dozen.

71 Q. When you speak of three cars coming in and three out does that mean one switching; you had three passenger trains in and three out, does that mean three switchings or six switchings?

A. You have got to switch these trains twice; when they come in have to put the train away, and when it went out have to place the train in the passenger depot; have to handle the train twice.

Q. Have to handle each train twice?

A. Yes, sir.

Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Schweer, I understand you to say that during the Fair time they had an extra man here and he acted as Yardmaster?

A. Yes, sir.

Q. He just simply looked up the business to be done, did he?

A. Yes, sir, getting it ready for the work; he was not near the engines.

Q. But the regular switching crew did the switching as usual?

A. Yes, sir.

Q. And he simply directed the work to be done, but didn't follow the engine or take any part in handling the engine or car or help at all?

A. No.

The Court:

Q. Mr. Schweer, I understand that on Fair times you have as many as three helpers on the switching crew?

72 A. Well, we have one extra man.

Q. You ordinarily have two helpers?

A. Yes.

Q. And on Fair occasions you get another one?

A. Yes, we get one more man; that is we have a Yardmaster.

Q. Now what was the reason you gave for employing an extra helper during Fair time?

A. On account of the volume of business. You see it requires the Yardmaster to look after directing the different work.

Q. You mean that ordinarily the Yardmaster takes the place of a helper?

A. Yes, sir.

Q. There would be two helpers and the Yardmaster ordinarily to transact the business?

A. Yes.

Q. In addition to the foreman, the engineer and fireman?

A. Ordinarily, you see we had two helpers and the engine foreman, fireman and engineer.

Q. Now is there no other occasion in which an extra helper is needed except on Fair occasions?

A. None that I know of.

Q. Isn't the volume of business rather an uncertain matter? Isn't

it likely to occur most any time? Isn't it likely to increase most any time?

A. During the Fair time we had so many passenger trains, had so many extra trains in here, special trains, sometimes three.

73 Q. You frequently have excursions here don't you during certain seasons of the year?

A. Oh, yes.

Q. You need extra help then don't you?

A. We don't have any.

Q. Wouldn't it be better to have extra help on an occasion like that?

A. Of course one excursion you see wouldn't bother us, no. One special train in here wouldn't make very much more switching or very much more work.

Q. Don't you frequently have an unusual number of freight cars to handle at certain seasons of the year?

A. Of course during certain seasons of the year we have more than others.

Q. On those occasions couldn't that switching be done and these cars handled with better facility if you had an extra helper?

A. Well, it might. Of course, I am not able to say on that point.

Q. You couldn't say an extra helper would be unnecessary on these occasions would you?

A. When we have a great deal of heavy business I suppose it would.

By Mr. Kinsworthy:

Q. Mr. Schweer, as I understand, you have an extra man who takes the place of foreman during Fair time? Is that correct?

A. Yes, sir.

Q. He is not a helper with the engine is he?

74 A. No, sir.

Q. He doesn't go with the engine and the switching crew at all does he?

A. No, sir.

Q. In other words, he checks up the yards, sees what work there is to be done and keeps the train dispatcher informed of the amount of work that is necessary?

A. Yes, sir, he directs the work and looks after things.

Q. On those days, the same switching crew does the switching that did it on other days don't it?

A. Yes, the same crew.

Q. On ordinary days why you don't need the foreman of the yard to take up this work, but when you have a great deal of it why you need him for that purpose?

A. Yes.

Q. Now suppose there were two engines here, two switch engines with switching crews, why this same foreman would do the checking up for both of them wouldn't he?

A. Yes, sir, he would line up the night switch crew.

Q. Are you familiar with switching terminals?

A. Of course I am not a switchman.

Q. They have a terminal Yardmaster?

A. Yes, sir.

Q. He doesn't have anything to do with the switching of the cars does he?

A. No, sir.

Q. But he just simply directs what work is to be done?

A. Yes.

75 Q. Now for instance take Little Rock. You might have a terminal yardmaster and have six engines at work, yet he wouldn't go with any of the engines would he?

A. No, sir.

Q. But he would direct the work to be done by each engine?

A. That is the way I understand it.

Q. And that is what caused this extra man to come here as Yardmaster and not as an extra helper?

A. Yes, as yardmaster.

Q. He don't go with the engine as a helper?

A. No, sir.

Redirect examination.

By Mr. Witt:

Q. Who does the work on ordinary days that he does, that this man does on Fair days?

A. Well, the three men. You see the foreman and the two helpers, they do that work.

Witness excused.

76

Testimony of J. W. Dean.

J. W. DEAN, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kingsworthy:

Q. What is your name?

A. J. W. Dean.

Q. Where do you live, Mr. Dean?

A. At Little Rock, Arkansas.

Q. What is your business?

A. General Superintendent of the St. Louis, Iron Mountain & Southern Railway Company.

Q. As General Superintendent of that road what territory do you have charge of?

A. All the lines in Oklahoma, most all of them in Arkansas, and the State of Louisiana.

Q. What lines in Arkansas do you not have charge of?

A. From Newport to the State line, and from Hoxie north to the State line, and from Paragould north to the State line.

Q. Who has charge of that?

A. General Superintendent Murphy of St. Louis.

Q. In your territory have you a list of the towns you have to have extra switchmen under the new law of 1913?

A. Yes, sir.

Q. I wish you would call those off?

A. At Newport, Little Rock, Hope, Texarkana, Paragould, Wynne, Helena, McGehee, Pine Bluff, El Dorado, Van Buren and Fort Smith. That is all *on* my territory.

77 Q. Hot Springs is in your territory, but you haven't complied with the law here, I understand?

A. Also Hot Springs and Hoxie.

Q. What other towns in Mr. Murphy's territory?

A. At Batesville.

Q. What extra expense are you put to on account of this extra man?

A. It runs to about \$45,000.00 a year.

Q. You mean in all the cities and towns in Arkansas?

A. On the Iron Mountain Railroad in the State of Arkansas, including Mr. Murphy's territory.

Q. Are there several cities and towns of the second class that you don't have to put in extra men?

A. That is by reason of my not operating a switch engine at that point.

Q. And the switching is done in those towns by the regular train crews?

A. The switching is done by the regular train crews.

Q. Are you familiar with all the yards in these various points in Arkansas in which switching is done on your road?

A. Yes, sir.

Q. I will ask you if the yard at Hot Springs is any more dangerous than the other points mentioned where you have to employ this third man under the law of 1913?

A. Hot Springs is a very bad yard to operate. It is on a grade, and many street crossings, curves. I have no yard in my territory to compare with Hot Springs.

78 Q. Is it necessary in Hot Springs in order for the safety there of the public or the employees to have three helpers?

Mr. Witt: I object to that question.

The Court: It strikes me that is an opinion of the witness.

Mr. Kinsworthy: Withdraw that question.

Q. How long have you been in the railroad business, Mr. Dean?

A. Since 1887.

Q. What positions have you held during that time?

A. From messenger boy to Train dispatcher and Yard master and Train master and various positions.

Q. When were you yard master and where?

A. Twenty years ago.

Q. Where?

A. At Hunter, Colorado.

Q. As Yard master did you have charge of switch engines?

A. Yes, sir. I was after that Superintendent of Terminals.

Q. How long were you Superintendent of Terminals?

A. About three or four years.

Q. Where?

A. On the Denver & Rio Grande Railroad at Pueblo, Colorado.

Q. How long were you Superintendent of Terminals there?

A. About six months.

Q. What other points?

A. The Colorado and Southern at Denver.

Q. How long were you Superintendent of Terminals there?

A. About a year.

79 Q. What other points?

A. The Illinois Central at Memphis.

A. About a year.

Q. What other points?

A. Also Superintendent of the Mexico National in the City of Mexico, in charge of the Terminal there for about a year; and at Little Rock for the Iron Mountain about the same time.

Q. When were you Superintendent of Terminals at Little Rock?

A. 1905.

Q. How long has it been since you were Superintendent of Terminals?

A. 1905.

Q. Have you been actively engaged in the railroad business ever since?

A. Yes, sir.

Q. In what position?

A. Superintendent and General Superintendent.

Q. As Superintendent of Terminals did you have charge of all the switching engines at the points you have mentioned?

A. Yes, sir.

Q. As Superintendent and General Superintendent do those things fall within your purview for you to look over and see after?

A. Under the direction of the General Superintendent.

80 Q. I will ask you now in handling cars to please explain how these cars are switched and to show what men are necessary and what men are not necessary in handling switch engines?

A. In the first place when a freight train arrives at a terminal the Conductor leaves his way bills at the yards; the yard clerk takes those bills and makes out cards showing the destination of the industry to where these cars are to be placed, and then he tacks the card on the side of each car, and the Yard Master by the time takes the train and proceeds to switch the train and place the cars at the various tracks where they belong, and when that is over—he will probably take two or three cars to a certain industry, two or three more to another, or it may be he wants to go out a half a mile or a mile to some industry and there are other industries along the line and he will take more than that number along with him. He will

take more than a half an hour to take care of a train such as would come into Hot Springs.

Q. Now in breaking up a train, whereabouts is this train generally placed when you break it up in connection with the yards?

A. In the receiving yard, the main yard.

Q. Well in breaking up that train do you switch over crossings to amount to anything?

A. At Hot Springs?

Q. Yes, or any other place in your various yards in the State?

81 A. At Hot Springs we switch over about three or four crossings. In Little Rock there is only one crossing from the main street viaduct of Argenta, which is the north end of the line, to Third street viaduct, south of Little Rock, which is I judge about a mile and a half. Those trains are switched there without going over any crossings.

Q. Take for instance in Hot Springs, suppose a switching crew composed of an engineer, a fireman, a foreman, and two helpers would go down to switch the car, what would be the duty of each one of those?

A. The foreman would direct the work and throw the switches. The man following the engine would cut cars off; the other helper would look after the cars after they were cut off, and shove them into the track, shut the brake off if necessary to block them, see that they are properly coupled up and that they wouldn't run back.

Q. As to crossings, going across a public crossing here while these three men, the foreman and two helpers, are busy with that engine, what opportunity, who could watch the crossing while they were crossing it?

A. Well the man in the field, the man who catches the cars in the yard from the man who cuts them off; the man called the field man, he does that, they are directed to do that.

Q. Suppose you had a third helper here would he add anything to the safety of these cars going across the crossing?

82 A. None whatever.

Q. Would he add anything to the safety of those operating the trains?

A. No, sir.

Q. Would he be of any service whatever to the switching crew in Hot Springs if he followed the engine as the other switching crews follow it?

A. I would consider he would be a detriment.

Q. Now Mr. Schweer, your agent, testified that during Fair time here in Hot Springs that you had an extra man over here. Will you explain to the Court what that extra man did?

A. We leave it to the discretion of the Superintendent to put on Yard masters to increase the station force or any force when there is any unusually heavy business as Fair time we have the business at Hot Springs. People come here from all over the State and come in great crowds and they expect to return in the same way. The

foreman of the engine would not have time to do his regular work and look after the people and see that the passenger trains are made up properly and dispatched on time, and the engines and everything like that, and for that reason we put on the Yard master.

Q. He is no member of the switching crew is he?

A. He has nothing to do with the switching crew. Yet like we put on another train, he looks after the work as a supervisor in an official capacity.

Q. If you have that extra man here the same switching crew does the same work?

83 A. Yes, only by direction of another foreman. We only promote the man acting as foreman to let the work go ahead under his direction as Yard master. He doesn't follow the engine or make any pretense of doing any switching.

Q. Take the various towns which you have spoken of in which the law requires you to use a third man, is there a single yard in any one of those towns that needs the extra helper?

A. From a safety standpoint?

Q. Yes.

A. No, sir.

Q. Would an extra helper in any of the yards that you have mentioned add anything to the public safety?

A. No, sir.

Q. Would it add anything to the safety of the employees?

A. No, sir.

Q. Now I understand, Mr. Dean, that there are engines, switch engines, that before this law was passed that you put an extra man with it?

A. Yes, sir.

Q. Now state to the Court why that was done?

A. Take a yard such as the Little Rock terminal, Argenta. It is on a curve and it would delay the switch engine to pass a signal from one man to another if you have only two men; that is the field man is so far off he cannot communicate with the foreman and the man following the engine without considerable delay, and to avoid this delay and stopping your switch engine for signals or something of that kind the Railroad Company puts

84 on an extra man, such as we had at other points where we have curved yards. In some places we put on eight or ten men.

Q. Take for example Little Rock, as I understand you, there isn't a crossing between what is called the Main Street station in Argenta south to the station in Little Rock; there is only two underground crossings there?

A. Yes, sir.

Q. Isn't it a fact before the law was passed the very engines operated in this yard I speak of?

A. Yes.

Q. And there wasn't a crossing where they operated at all was there?

A. No, sir.

Q. As I understand this extra man was put on because they could do more work?

A. Keep the engine moving, not for the purpose of safety. It would not add to the safety of the men or the patrons of the Company or anybody.

Q. Then as I understand, the Railroad Company in the exercise of its discretion, when it is necessary to have this man, you put him on in order to increase the efficiency of the crew?

A. Yes, to increase the efficiency of the crew.

Q. And not for the matter of safety?

A. And not for the matter of safety.

Q. Now take the majority of towns, in fact all of them except Little Rock, is it ever necessary even to do the work to have
85 the extra man?

A. No, sir.

Q. Then as I understand from you, the extra man then is simply a dead expense to you probably with the exception of one or two or three instances in the Little Rock or Argenta yard?

A. We are using this man anyhow.

Q. About how many engines?

A. About three or four heavy train yards it is customary to use additional men, but where they are doing light industrial work two men is all that is necessary.

Q. Suppose a switching crew are going from Argenta to the Dickinson Brick yard, now would you under this law have to have an extra man in that switching crew?

A. Yes, sir.

Q. Then if that engine was going from Argenta to the Dickinson Brick yard you would have to have on that engine an engineer, a fireman, three helpers and a foreman—six men?

A. Six men.

Q. How far is it from the Round House in Argenta to the Dickinson Brick yard?

A. The route we go about two miles.

Q. Then they would travel two miles to go for a box car out there would they?

A. Yes, sir.

Q. And if they had just one car to bring in from that place you would have to send those men to get it wouldn't you?

86 A. Yes, sir.

Q. Suppose you were going out there to do switching at that point, after you got there to do the switching would there be any cars that you would have to pull across the yards out there in the Dickinson Brick yard?

A. Only two switches out there that I remember.

Q. Crossings I mean?

A. There is no crossing out that way.

Q. Then the switching that you did at the Dickinson Brick yard would be within that yard and no crossing?

A. Yes.

Q. You would simply make the number of cars you were going to take back to Little Rock?

A. And start out as you would with another freight train.

Q. And in the pulling of these cars into Little Rock it would simply be a straight haul would it not?

A. Yes, sir.

Q. And the engineer and fireman would do the looking out?

A. Yes, sir.

Q. Is what is true of the Dickinson Brick yard true of many industries around Little Rock?

A. It is true of those out south on that main line and also south on the Valley Division.

Q. Take the Big Rock Construction Company, it is the same with that isn't it?

A. Yes.

Q. Suppose you take an industrial track like that of the
87 Plunkett-Jarrell Grocery Company—do you know how long their track is, how many cars it will hold?

A. I guess it will hold about thirty or forty cars.

Q. Do you know as a rule about how many you put in there at a time?

A. Two or three.

Q. Now in putting in two or three cars then for Plunkett-Jarrell on that side track, you would have to use this full switching crew in putting them in there?

A. Yes, sir.

Q. Or taking out one empty car you would have to use them?

A. Yes.

Q. Is that true of all the industries around Little Rock?

A. As a rule it is. There isn't every time what we call a tramp engine. That is generally handled on that end.

Q. Where are your heavy going cars handled in a big yard?

A. In the reception yard and the make-up yard.

Q. As a rule are there any crossings at all in those yards?

A. No, sir; at Little Rock there is no crossing until you get out of the yard.

Q. You said you had charge of Oklahoma, what towns of any size does your road go through in Oklahoma?

A. About four good towns.

Q. Name them?

A. Salisaw, Wagoner, Claremore and Nowater.

Q. How many men compose your switching crew in those towns?

A. Five men.

Q. That is an engineer, fireman—

88 A. Engineer, fireman, the conductor, who acts as foreman of the work, two helpers.

Q. As I understand a crew of five men then handle all of your switch engines in Oklahoma?

A. Yes, sir.

Q. I will ask you how does that compare, the work done there and in Arkansas where you have the extra man?

A. As far as safety is concerned it is just as safe with that number of men as in places where we have additional men.

Q. As to the efficiency of it in the ordinary switching, how would it be?

A. The efficiency is all right. There is no delay, no trouble.

Q. Has there ever been any complaint as to any danger there to the public or the employees where you have only two helpers?

A. No, sir.

Q. Well we will take Louisiana for instance—how many towns of any size does your road go through?

A. There is about four down there.

Q. Name them?

A. Monroe, Alexandria, Lake Charles and Vidalia.

Q. How many men do you have in the switching crew in Louisiana?

A. Five men.

Q. How does that compare as to safety both to the public and the employees as to your crews in Arkansas where you have the extra man?

89 A. The same business is handled in the same manner you might say at Monroe as at McGehee, Arkansas. The trains are started from Missouri and they go down through Paragould and Monroe and Alexandria and McGehee. It will take about as much time to make up a train at McGehee and get it out and just as much safety at Monroe with the five men.

Cross examination:

By Mr. Witt: I move to exclude all that part of the testimony of the witness referring to other towns except Hot Springs.

The Court: The Court will permit the testimony to stand for the purpose of comparison and for the purposes of illustration. Motion overruled.

To which ruling of the Court the State at the time excepted and asked that her exceptions be noted of record, which was accordingly done.

Q. I believe you said Hot Springs was bad to operate, will *will* you please state in what particular?

A. On account of the grade and curve. The men cannot see out very far and we have got to put the hand-brakes on the car to keep them from rolling back and causing trouble; if you didn't they would probably roll back on the man and probably cause an accident.

Q. Can you state the grade?

A. About a one per cent grade. The other yards of the State are almost flat.

90 Q. Have you a field man in Hot Springs?

A. Yes, sir.

Q. What is his duty?

A. To see that the cars are coupled up that are shoved to him, and if necessary to set the brakes and prevent them being shoved off the end of the track or shoved off on to another track and cause damage, look out for crossings. He is one of the crew, one of the helpers. No switching car goes over a crossing, they are not per-

mitted to shove cars over a crossing without another man being on the car. He is the first man going over; he is the field man; it is his duty to be there.

Q. What does the third helper do in the other cities in Arkansas that is not required in Hot Springs for instance?

A. Well it has been a conundrum to find out what is the best thing to do with that man. In some places he would take up more room on the foot board than he had there. We have had some cases where a man has been in danger by too many of them trying to climb on. We generally work him in the field assisting the other man, but sometimes he helps the foreman and let him look after his bills and other matters, let him get away from his engine at times.

Q. How do the populations of the towns in Oklahoma compare with the population of Hot Springs?

A. They are not as much. Those towns I mentioned run from three to seven thousand.

91 Q. How is Louisiana?

A. In Louisiana, it is better, the towns are larger. Alexandria is about the size probably of Hot Springs, and so is Lake Charles and Monroe, very little difference. Vidalia is smaller.

By Mr. Kinsworthy:

Q. As to the amount of business done in the yards, how does that in Monroe and Alexandria compare with Hot Springs, just approximately?

A. Well we handle about ten cars at Monroe and McGehee and Alexandria and those points where we handle one car in Hot Springs.

Q. How does the business compare in Hot Springs to Helena?

A. Not as heavy.

Q. In Hot Springs?

A. No, sir.

Q. Do you know about how much heavier it is at Helena?

A. The receipts at Helena are about a third more than Hot Springs. The relations are quite different, no comparison in regard to work.

Q. As I understand, one switch engine is sufficient to do all of your work at Hot Springs?

A. Yes, sir.

Q. And the Louisiana, New Orleans and Texas Railway Company, it takes two engines to do their switching in Helena?

A. Yes, sir.

By Mr. Witt:

Q. Take McGehee now, I will ask you what the first helper does?

92 A. He is the man who follows the engine and cuts off the cars. As I explained awhile ago the cars are marked showing which track they belong on, and he cuts them off and signals the foreman of the engine.

Q. That is his full duty is it?

A. And pass signals to the engineer and receive signals from the field man.

Q. That is his full duty is it?

A. That and looking after crossings when they are backing up. Whenever they are pulling up over a grade it is his duty to be on the front end of the foot board to see that the switches are all lined up and everything all right.

Q. Explain the full duty of the second helper at McGehee?

A. He assists the foreman in throwing the switches and looking after cars going into the field just the same as the other field man.

Q. And the third helper at McGehee?

A. He is the same; their work is divided just about in that manner.

By Mr. Kinsworthy:

Q. In other words, as I understand it, the second helper and the third helper do about the same work?

A. About the same work.

Q. In other words, the first helper looks after that part of the train next to the engine and keeps watch over the crossings when going that way?

A. Yes, sir.

93 Q. And the second helper looks after the other end of the train and looks after the crossings when going in the opposite direction?

A. Yes, sir.

Q. The foreman throws switches and gives signals?

A. Yes, and instructs the man where to cut off the cars, and take up the brakes.

Q. In your experience as a railroad man, those two helpers and the foreman is all that is necessary?

A. That is all I have ever used.

Q. When you have this extra one I suppose he is to help the second one do what he would be doing anyway?

A. Yes, sir.

Q. And for that reason you think that he is not necessary?

A. I found it so. I handled the Pueblo yards.

Q. What were your grades out there?

A. About one-half of one per cent.

Q. Are there curves in that?

A. Yes, sir.

Q. Do you have crossings?

A. Yes, sir; bad crossings.

Q. I will ask you now to take Alexandria and Monroe—do you have more or fewer crossing- there than you do in Hot Springs?

A. We have just about the same number.

By the Court:

94 Q. Mr. Dean, if I understood you correctly, you said that the first helper follows the engine, cuts off the cars, passes the signal to the engineer and looks after the front end of the train. Is that about right?

A. Yes, when they are backing it.

Q. Now you say the second helper then would do what?

A. He would assist the man in the field, the fellow out catching the cars. The foreman would throw the switches and this other man would hold the foreman throw the switches and at the same time he would help the field man catch the cars and set the brakes, if necessary.

Q. Where would the foreman be?

A. Work along the trains, sometimes checking up the cars, seeing where they belong and making up his trains and seeing that the cars are put in the right track.

Q. Does the foreman direct the work of all three helpers where you have three?

A. Yes, sir.

Q. Does he have any control over the fireman and engineer?

A. They are in his charge.

Q. He has to generally supervise or superintend, direct the work of the train?

A. Yes, in other words he is yard conductor.

Q. Now suppose you had a train of say thirty or forty cars, you are switching there in the yard across a bad crossing in the City limits where there is a great deal of crossing of vehicles; suppose the first helper was looking after the front part, attending to his duties at the front; suppose the foreman is off on the other side and
95 generally directing and supervising the work; say the other helper is down say at the far end of the train on the same side as the foreman; who then would look after the rear end of that train on the other side?

A. Either the foreman or the field man or the other helper.

Q. The foreman though is on the other side?

A. Not permitted to let a car go across a crossing without someone being on the car; stop and wait for the man to get back and then give a signal for him to go ahead. You would have to stop a train and wait; you have no right to shove a car over a crossing without a man being on the car; stop the car or give signals for the engineer to stop.

Q. Now suppose there should happen to be pedestrians on the track, do you think it would be just as safe for two helpers to look after the handling of these cars as three?

A. Yes, because we have one man on the lead of the car, and the second man I don't see where he would be any help.

Q. Couldn't you cover more territory on both sides of trains and look after it better if you had three men than if you had two?

A. I don't think so; I don't think it would be of any benefit.

Q. Couldn't they see more what was going on all sides of the train and different parts of the cars, I mean if it had thirty or forty cars?

A. Not so far as benefits are concerned.

96 Q. Wouldn't they be of any help by being there so far as safety to the public is concerned from any accidents?

A. In my opinion they would not be.

Q. Couldn't prevent any more accidents if you had four men?

A. No, sir, in my experience it wouldn't, have too many men on duty there more or less.

Q. They are each assigned their special stations, then probably you would have—

A. By reason of this extra man coming into the crew there is a division of the work and he is depending on somebody else to do something, which he wouldn't do otherwise.

Q. Generally speaking, the principle of the division of labor obtains in all manufacturing enterprises. Isn't that generally regarded to promote efficiency and safety, the principle of the division of labor?

A. We had that first in mind always in handling our work, and every Superintendent of this system, every fellow puts on whatever men is necessary to handle the work with safety.

By Mr. Kinsworthy:

Q. Now, Mr. Dean, I understood you to say that it is against the rules for the trains to be switched across crossings without a man being on the car to see?

A. Yes, sir.

Q. And if a man is standing on the foot end of the train going across the crossing he could see both sides of the track?

A. Yes, sir.

97 Q. Two men couldn't see any more than one?

A. I don't think they would see as much. In my experience one man alone would attend to the business better than two.

Q. Isn't it a fact that in the towns or cities where a crossing is dangerous that you are required to keep a flagman?

A. Yes, sir.

Q. Take for instance in Hot Springs, have you not all of your crossings protected there?

A. There is one crossing protected by a watchman, and three crossings with bells; putting them in now, the material has arrived and he is going to work on them.

Q. These automatic bells?

A. Yes, sir.

Q. So whenever a train or car is approaching the crossing this bell rings automatically until the car gets over?

A. Yes, sir.

Q. Take Little Rock for instance, the crossings there that are populous, how are they protected?

A. They are protected by a watchman.

Q. So in all the towns in which you have these yards where you do switching, whenever the town makes it necessary for the safety of the public to have a watchman, you are required to put one there are you?

A. Yes, sir.

Witness excused.

T. A. SHEA, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. T. A. Shea.

Q. Where do you live, Mr. Shea?

A. At McGehee, Arkansas.

Q. What is your business?

A. Superintendent of Railroad.

Q. Of what road?

A. The Iron Mountain.

Q. What territory have you?

A. What is known as the Valley Division, comprising the line from East Little Rock to Monroe, and from McGehee to Feriday, what is known as the south M. H. & L., and the line from Warren to Arkansas City, and the line from Luna Landing to Crossett, and the line from Luna Landing to Crossett.

Q. At McGehee, Arkansas—I understand that is a City of the second class?

A. It is.

Q. Do you have to, under this new law of 1913, use an extra switchman in your switching crew?

A. We do.

Q. How many switching crews do you have there?

A. Three regularly, and occasionally a fourth crew.

Q. Day and night?

99 A. Well the regular force, there is one day and two nights, and it very often occurs that we require a second engine days.

Q. Now your territory I believe runs down into Louisiana; what towns of any size do you take in down there?

A. Well Monroe is the largest town we take in in Louisiana.

Q. Comparatively speaking, which is the larger town, Monroe or McGehee?

A. Why Monroe.

Q. How many men do you use with the switch engine in Monroe?

A. We use a foreman and two helpers.

Q. Besides the engineer and fireman?

A. Yes, sir.

Q. I will ask you in doing the work in Monroe and in McGehee, is the work done as well at Monroe and with as much safety as at McGehee where you use the extra man?

A. Just the same, there is no difference.

Q. What relatively speaking about the amount of switching done, how does that compare?

A. Well there are more cars handled through McGehee than there

are through Monroe, but there is more industrial switching at Monroe.

Q. That is, I understand, there are more trains come through McGehee?

A. Yes, sir.

Q. But as far as switching back and forth in the yards, you do more at Monroe?

A. More industrial switching, a good deal more.

100 Q. Your jurisdiction I believe you said went into Warren, Arkansas?

A. It does.

Q. What other road goes in there?

A. The W. & O. V.

Q. The Warren ' Ouachita Valley?

A. Yes, sir.

Q. Do you know how long that Railroad is?

A. It is approximately eighteen miles.

Q. Can you give me an idea about the relative amount of switching that that road does, and yours, at Warren?

A. Well they do the greater amount of switching, more than we do. I should say of the amount of switching done there, we do about 35 per cent of it approximately and they 65 per cent.

Q. And the Ouachita and Valley do the other?

A. Yes, sir.

Q. Do they do a great deal of the switching on the cars that your road handles?

A. Well they do the switching on cars that we take in for the Southern and Bradley Lumber Companies.

Q. In doing the switching there, does the Ouachita & Valley pass over more crossings than your road does in doing this switching?

A. I should say approximately the same number.

Q. What road does it make connection with?

A. The Rock Island.

101 Q. And it does all the switching then for the cars that go over the Rock Island?

A. Yes, sir.

Q. And all the cars that go into the Rock Island for Warren go over it and it is switched out there?

A. Yes, sir.

Q. And it also does a great deal of the switching, as I understand, for the cars that you take out?

A. Yes, sir.

Q. Can you name some of the big plants they do switching for and place them on your tracks?

A. Why they don't bring in many cars for industries located on our lines. We take in a good many for industries located on their lines. They also make deliveries to us and above them down practically to our depot. We simply reach in and take them. They do the switching and placing them and leaving them from the Southern Lumber Company and from the Bradley Lumber Company, and also another mill over there that I don't recall the name.

A. As I understand, the Warren & Ouachita Valley Railroad being less than one hundred miles long doesn't have to comply with this law of 1913?

A. No, sir, it does not.

Q. And they only use an engineer, a fireman, a foreman and two helpers?

A. Sometimes only one helper.

Q. How long have you been in the railroad business, Mr. Shea?

A. Since 1883.

102 Q. What positions have you held?

A. I have held positions as track laborer, telegrapher, fireman, brakeman, conductor and engineer; also that of train dispatcher.

Q. You never had charge of a terminal?

A. I have never had charge of a Terminal in the capacity of the Yard master.

Q. In what capacity, if any?

A. I have had charge of terminals as a Train Master and also as a Superintendent.

Q. I will ask you in the handling of switch engines and doing switching, from your experience as an engineer and a fireman and a foreman and two helpers sufficient to do the switching with safety to the public and to the employees?

A. It is.

Q. Does the additional man add anything to the safety of either?

A. In my judgment it does not.

Q. Well before you put on the extra man at McGehee, what is the difference in your switching now as a matter of safety and efficiency and before you put him on?

A. None whatever. I might add to the contrary on account of the fact that too many men are on the job will result at times in something being undone that would have been done if there wasn't so many men around, one depending on the other.

103 Q. If a man have a thing to do that one man could do with safety and had time to do, that one man will do it better than having two to do it?

A. Undoubtedly.

Q. As I understand, Mr. Dean is the General Superintendent, and you are the Superintendent under him?

A. Yes, sir.

Q. Now something was spoke- of as a field man; is the foreman called the field man?

A. No, sir.

Q. Who is he?

A. He is a helper.

Q. As I understand, one of these helpers is called the field man and the other is called what?

A. Foot board man.

Q. Then this crew is known as an engineer, fireman, a foreman, a foot board man and a field man?

A. Where two helpers are used.

Q. Now where you have three helpers what do you call the third one?

A. Well they name them the long field man, the short field man and the foot board man.

Q. In other words, this third man you put on becomes an assistant to the field man?

A. Yes, sir.

104 Cross-examination.

By Mr. Witt:

Q. What does the long field man do that the short field man doesn't do?

A. Well as a matter of fact at the present time using three men, we simply use the long field man to ride the cars in and walk down and see how far he has shoved, see how much room he has in the track where the view is obstructed. He walks down there and comes back and tells the foreman how many more he can shove in at that end or something of that kind, or if the car is kicked off pretty fast he rides it down and slows it up.

Q. That is what the long field man does now?

A. That is what we use him for; just to fill in the time more than anything else.

Q. And the third field man rides on the rear and just looks out does he?

A. He does the cutting; he reaches in and cuts off so many. It depends on what the switch list calls for, if it calls for ten or fifteen he reaches in and cuts off that number.

Q. How many switching crews in Hot Springs?

A. Why I am not familiar with that territory at present. I couldn't say just how many, but my understanding is that there is one.

Q. How many at Monroe?

A. Well that territory is not under my jurisdiction. I only go to Monroe. It is under the supervision of the Louisiana Division.

105 Q. How many in Little Rock, if you know?

A. I wouldn't say off hand, but approximately 15 or 16.

Q. Switching crews?

A. I would say that there is that many.

Q. When you said you had three switching crews at McGehee, did you mean you had that on your system?

A. Yes, sir.

Witness excused.

Testimony of J. H. Wright.

J. H. WRIGHT, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. J. H. Wright.

Q. Where do you live, Mr. Wright?

A. Fort Smith.

Q. What is your business?

A. President of the Arkansas Central Railroad Company.

Q. Are you manager of it too?

A. Yes, sir.

Q. How long is the Arkansas Central Railroad Company?

A. 46 miles.

Q. From what place to what place does it run?

A. From Fort Smith to Paris in Logan County.

Q. Do you go into Fort Smith?

A. We go in over the Iron Mountain under trackage rights.

Q. You mean by trackage rights, you can have the right to run over the tracks of the Iron Mountain?

A. We lease those tracks and use them in common with the Iron Mountain having the same rights over them as they do.

Q. Do you do switching in Fort Smith?

A. Yes, sir.

Q. Over what tracks do you switch in Fort Smith?

A. All of the tracks owned by the Iron Mountain.

Q. How much of a crew do you use in doing your switching?

107 A. We have two crews that switch there. One of them consists of an engineer, a fireman, a conductor and two brakemen; another consists of an engineer, a fireman, a conductor and one brakeman.

Q. And you switch over all the tracks that the Iron Mountain switches over?

A. Yes, sir, all of them.

Q. Now you say your switching crew is composed of an engineer, a fireman, a foreman and one helper?

A. They are both train crews, both road crews.

Q. I understand one of the crews is composed of an engineer, a fireman, a conductor and two brakemen?

A. Yes, sir.

Q. And the other is composed of an engineer, a fireman, a conductor and one brakeman?

A. Yes, sir; that is correct.

Q. Now all of these crews that do your switching there, do you have any trouble as to the safety of the public?

A. No, sir, we have never had an accident in the Fort Smith yards.

Q. Do you have any trouble as to the safety of your employees?

A. No, sir; none whatever.

Q. Are they sufficient to do your work?

A. They do it easily.

Cross-examination.

By Mr. Witt:

Q. Where you use five men, is that on passenger or freight trains?

108 A. That is the local freight train.

Q. The four men was used on what?

A. A passenger train. They become a switching crew as soon as they tie up as a passenger train.

Q. I don't understand?

A. I say they become a switching crew as soon as they tie up as a passenger train.

Q. Can you explain why it is necessary to have one more man on the freight than on the passenger?

A. Yes, the reason we have one more man on the freight is because we unload the local freight along the road and necessity requires more than one man to do the work.

Witness excused.

109 *Testimony of S. H. Barnes.*

S. H. BARNES, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. S. H. Barnes.

Q. Where do you live, Mr. Barnes?

A. Muskogee, Oklahoma.

Q. What is your business?

A. Superintendent of the Midland Valley Railroad.

Q. How long is the Midland Valley?

A. We have 375 miles of main line.

Q. Through what territory does that extend?

A. Through Arkansas, Kansas and Oklahoma.

Q. How much of your road is in Arkansas?

A. About fifty miles, which includes joint track with the Frisco of 16 miles.

Q. What towns do you reach in Arkansas?

A. Fort Smith, Greenwood, Hartford, Hackett, Midland.

Q. What towns, if any, in Arkansas do you have to put on the extra switchman on your switching crew under the law of 1913?

A. Fort Smith.

Q. What towns outside of the State have you that will compare favorably with the business done in Fort Smith through which you pass?

A. All towns outside of Kansas where we have switching crews have more business than we do at Fort Smith.

110 Q. Name those towns?

A. We have switching crews at Muskogee and Tulsa, Oklahoma.

Q. You say you had more business at either one of those towns in Oklahoma than you do at Fort Smith?

A. Oh yes, decidedly more.

Q. How many men do you use in your switching crew in Oklahoma?

A. We use a foreman and two helpers.

Q. Besides the engineer and fireman?

A. Yes.

Q. In Fort Smith you have to use how many?

A. A foreman and three helpers, and engineer and fireman.

Q. In having your switching done with your switching crews in Oklahoma and in Arkansas, I want to know whether or not you get any better work done where you use this extra man than you do where you are not using him?

A. It is rather hard to make a comparison. Our business as I stated is rather light in Fort Smith. I get good service of course at Fort Smith; I think we get equally as good service in Oklahoma.

Q. How long have you been in the railroad business?

A. Practically all of my life, some 35 years.

Q. What positions have you held, Mr. Barnes?

A. I have been telegraph operator, Station Agent, Brakeman, Yard Master, Train Master, and Superintendent.

Q. Then you have been Yard Master and Train Master both?

A. Yes, sir.

111 Q. I will ask you in your experience as a train man and from your observations, does the additional helper add anything to the switching crew?

A. It depends on the character of the work being performed by that crew. On account of the number of cars there are times when more helpers can be used to advantage enabling an additional number of cars to be handled.

Q. That is they could do more work, handle more cars. Now as to the public safety and the safety of the train crew does the extra man add anything to the safety?

A. I don't think so.

Q. Then in your opinion the extra man adds nothing whatever to the safety of either the public or the employees?

A. No.

Q. But as you say where you have very heavy switching done sometimes in using an extra man you can do more switching?

A. Handle more cars. As far as safety is concerned I don't see any difference.

Q. Take for instance Fort Smith with your switching crew; does the extra man add anything to the efficiency of that crew?

A. We station a man on the leading car whenever going over a crossing whether there is one helper or three. I don't see that two put there would add anything to it.

Cross-examination.

By Mr. Witt:

Q. How many cars in your judgment would require a third helper?

A. It depends on the grade of the yard, whether it is a
112 yard where there is a grade so they can cut them and drop them. The limit is the number of cars you might pull or handle with your engine to begin with. You might, in what is known as a hump yard, use as many as a dozen men. The ordinary yard, the ordinary grade, the character of work depends on the number of cars that they can handle.

Q. Can you say whether this is a hump yard in Hot Springs or not?

A. I am not familiar with that.

Q. Explain to us so we can understand what is meant by a hump yard?

A. It is a yard on a grade, where the grade is sufficiently heavy so that the cars when you cut one or more cars off the string and the grade will carry them down; they will run; the grade causes them to move, that is all. Then you want the station man to throw the switches and catch those cars as they are cut off, perhaps give them a light kick and ride them in possibly, according to the grade. You may have hold of 50 cars at the top of that incline and cut them in two fifty times, which would necessitate fifty men. That is of course exaggerating it.

Q. Would a one per cent grade constitute a hump yard?

A. I think so, yes.

By the Court:

Q. Now I believe you said in response to a question from General
113 Kinsworthy a while ago that you didn't think that three helpers would conduce any more to the safety of the public than two; did I understand you correctly?

A. Yes.

Q. Now in a case of a public crossing in the limits of a City of the first class where there is a great deal of switching going on, quite a large number of cars we will say—would not three helpers be a better protection to the safety of pedestrians or others in and about tracks or trains than two helpers?

A. Not in my experience.

Q. It would not.

A. No.

By Mr. Kinsworthy:

Q. Mr. Barnes, in your cross-examination you stated that a one per cent grade would constitute a bump yard. Do you mean that just because there is a grade of one per cent in a yard it is a bump yard?

A. I mean that about one per cent would be sufficient for a bump yard. I don't mean all yards with a one per cent grade are bump yards.

Q. Did you ever see a bump yard in Arkansas?

A. Not that I know of.

Q. Are there any bump yards in Arkansas?

A. If there is I don't know it.

Q. In other words, a one per cent grade would be sufficient to make a bump yard if it were graded sufficiently to make a bump yard out of it?

114 A. Yes.

Q. These hump yards are put where there is no grade crossings aren't they?

A. It is necessary to put them where there is no grade crossings.

Q. Do you know of any law in the United States outside of Arkansas requiring a fireman and foreman and engineer and three helpers to constitute a switching crew?

A. I have no knowledge of it.

Witness excused.

115 Mr. Jones: We move the Court that the testimony of E. M. Wise relative to the conditions in Helena of how the switching of the Missouri & North Arkansas Railroad is done by the L. N. O. & T. a railroad four miles in length, under a joint arrangement with the Missouri and North Arkansas Railroad, which is 350 miles in length—we move that it be stricken from the record. That is all comprised in the testimony of E. M. Wise, pages —, —, —, and — of the direct testimony of E. M. Wise.

The Court: The Court will overrule the motion to strike; but the testimony of the witness, E. M. Wise, will only be considered by the Court in so far as it tends to prove that the act in question is unnecessary and unreasonable and for no other purpose.

To which ruling of the Court the State at the time excepted and asked that her exceptions be noted of record, which was accordingly done.

116 *Testimony of E. M. Wise, Recalled.*

E. M. WISE, being recalled to the stand for further cross-examination, testified as follows:

By Mr. Jones:

Q. In what capacity are you now employed by the Missouri and North Arkansas, Mr. Wise?

A. General Manager for the Receivers.

Q. In what capacities have you acted as a railroad man with different railroads?

A. Why I have worked as an operator, an agent, a Terminal Superintendent, a Superintendent, General Superintendent.

Q. How long did you act as Assistant to the President?

A. I don't remember unless I had the—I think about nine or ten months.

Q. When was that, how long has it been?

A. That has been about four years ago.

Q. How long did you act as General Manager for the Missouri and North Arkansas?

A. Two years and a half.

Q. What did you do before you were General Manager?

A. I was General Superintendent of the National Railways of Mexico.

Q. How long did you hold in that capacity?

A. I think about eleven or twelve months.

Q. What did you do before you were in that position?

A. Vice-President and General Manager of the Pan-American Railway.

Q. How long did you serve in that capacity?

117 A. I think about nine or ten months.

Q. What did you do before you did that?

A. I was Assistant to the President of the Pan-American.

Q. That was the time you spoke of a few moments ago?

A. Yes, sir.

Q. What did you do before you were Assistant to the President?

A. I was Superintendent of the Mexican Railway.

Q. How long did you act in that capacity?

A. I think about five years and a half.

Q. What did you do before you got that?

A. Superintendent of the Tehauntepec National Railway.

Q. How long were you in that position?

A. I don't remember exactly.

Q. Approximately how long?

A. About 18 months.

Q. Well how long has it been, Mr. Wise, since you acted as Superintendent of Terminals?

A. I believe it was in 1902 or 1903; I am not positive.

Q. 1902 since you acted as Superintendent of Terminals?

A. Maybe as late as 1904.

Q. You have testified in your direct examination about the number of men required to do the switching in yards; where have you been engaged in a railroad that gives you a knowledge of these facts; is that the time that you were Superintendent of Terminals?

A. Oh, a man naturally has a general knowledge of the work that is to be performed by them in most any of the positions I have mentioned.

118 Q. Superintendent of Terminals has active charge of the switchmen has he not?

A. The Yard Master generally.

Q. He is the one that is looked to is he not?

A. The Yard Master.

Q. Superintendent of Terminals, isn't he over the Yard Master?

A. Yes, sir.

Q. He has charge of the Yard Master?

A. Yes, sir.

Q. Did you ever act as Yard Master?

A. No.

Q. Did you ever act as switchman?

A. No.

Q. What are you basing your knowledge of switching various cars on when you testify you don't need but two men to switch box cars in a yard?

A. I think a man that has been in these positions is capable of judging some.

Q. What did you do that gives you that ability, gives you that knowledge of switching box cars?

A. Well from personal observation.

Q. Not of your own experience as a switchman?

A. No, I haven't been a switchman myself.

Q. And the knowledge you have about these matters is just observation?

A. Yes, I haven't done the actual work.

Q. You have never had any real experience in that line at all?

A. No, I have never done the actual work.

119 Q. As Superintendent of Terminals, did you give orders to the switchmen?

A. Not directly, through the Yard Master.

Mr. Jones: I move to exclude that testimony where Mr. Wise says that three men are unnecessary, showing absolutely nothing to base his opinion on. Your Honor will remember it was objected to before and you let that go in about the Helena conditions, and then Mr. Kinsworthy asked him about the use of the third man, and it went in before. Now I am going to object to it, that he is trying to testify as an expert when he hasn't had actual experience. He never switched a box car, never had any direct connection; the closest he has ever been to the switchmen is the Yard Master. I move that the expert testimony of his relative to the number of switchmen needed be stricken from the record.

Mr. Kinsworthy: Your Honor, we have shown that he has been in the railroad business for a great number of years, and in this business he has to have all of this work done. While he doesn't do the work, yet he has seen it done and has had it done in the various yards over all of these roads, and from his knowledge as a railroad man in the position that he has held, and seeing this work done and from having it done and knowing how it is done that the third man is not necessary. A man don't have to do a thing in order to know how it must be done.

The Court:

120 Q. Mr. Wise, when were you last Superintendent of Terminals?

A. I think it was about 1904.

Q. Where?

A. At Vera Cruz, Mexico.

Q. Have you ever been Superintendent of Terminals in the State of Arkansas?

A. No, sir.

Q. Have you ever been Yard Master in the State of Arkansas?

A. No, sir.

Q. Have you ever had any control or supervision over switching crews in the State of Arkansas?

A. Indirectly.

Q. At what place?

A. Through the Superintendent.

Q. Through what Superintendent?

A. Through the Superintendent of our road only.

Q. The Missouri and North Arkansas?

A. Yes, sir.

Q. What position were you at that time?

A. In the same position I am now.

Q. What is that now?

A. General Manager for the Receiver.

Q. When?

A. At the present time.

Q. And how long past?

A. For two years and a half.

Q. Well as such General Manager what contact did you have with these switching crews and what opportunity to observe them?

A. Well being out in the yards quite frequently.

121 Q. What yards?

A. The different yards.

Q. At the Terminal?

A. Yes, sir.

Q. How frequently?

A. Well every day; the office is right in the yards.

The Court: The motion to strike is overruled.

To which ruling of the Court the State at the time excepted and asked that her exceptions be noted of record, which was accordingly done.

By Mr. Jones:

Q. Now what cities, Mr. Wise, as the General Manager of the Missouri and North Arkansas, have you as a city of the first and second class in Arkansas.

A. We haven't any cities of the first and second class on our road except Helena and Joplin.

Q. You don't do your own switching there do you?

A. No.

Q. Where was it that you observed this switching in the yards that you are basing your opinion on?

A. Searcy, Harrison and Leslie.

Q. They are all cities of the third class are they not?

A. I think so.

Q. Then your observations along this line, what did that consist of, personal contact with the men?

A. No.

Q. Conversations with them?

A. Why I have had conversations with them, but not personal contact with the work.

122 Q. You have had personal conversations with them?

A. Yes, I have had personal conversations with them.

Q. Is that the source from which you gained this knowledge?

A. No.

Q. Just tell the court just why and what opportunity you have had and how you know how this switching is done to know how many men is required?

A. I have just told you it is from observation, seeing the work done; a man continuously seeing anything done every day you might say certainly learns something about it.

Q. Did you have a management of the switching crew?

A. You mean as foreman of the switch engine or go out and tell a man to do something?

Q. In any capacity.

A. Well I should say that I have directed a man to do different things, the foreman of the switch engine; but so far as going out and taking the engine with the other two switchmen and doing the work, I haven't done that.

Q. Your personal contact and your information on these switchmen comes through the Yard Master does it not?

A. Yes, sir.

Q. Now you stated, Mr. Wise, that you considered two men and the foreman sufficient to do the switching. You base this on third class cities do you not? Have you ever had any opportunity to examine your own switchmen under the direct connection in Arkansas in cities of the second class when you don't run into any

123 city of the second class?

A. Yes, we run into Joplin.

Q. That is not Arkansas?

A. Well Helena is in Arkansas.

Mr. Kinsworthy: I don't think it ought to be confined to Arkansas if switching is the same in St. Louis as here.

Mr. Jones: We object to going out to Missouri, Alaska and the North Pole to see how this switching is done; the question here is Arkansas.

The Court: Proceed with the examination.

Q. Now you said you think that two men are sufficient to do this work?

A. I do, with a foreman.

Q. Your opinion, your testimony is based on your knowledge in these cities of the third and fourth class that your road runs into?

A. And second also—Helena.

Q. You don't actually do your switching at Helena do you?

A. No.

Q. And your observation at Helena would come merely as an ordinary citizen?

A. No; we have a little closer working arrangement down there than a mere citizen.

Q. You have no control over the other road have you?

A. Indirectly.

Q. Indirectly you have charge of the other road?

A. We have a working agreement with them.

Q. You don't actually do the switching do you?

A. No.

124 Q. Your road don't actually do it?

A. No.

Q. You just have so many cars and it is up to them to do it and how they do it?

A. And it is up to us to pay our proportion of it and to see that we get an even break.

Q. All you have to — there is to pay your proportion of the switching, of the expense of it, and see that you get an even break. Now what experience have you had in Helena that gives you any information about the number of men required?

A. From seeing them do the work there.

Q. Just from observation?

A. Yes, sir.

Q. You don't have any charge of them?

A. Not directly.

Q. You haven't the appointing power of the men working there have you?

A. No, but we have the power to un-appoint them if they don't do their work.

Q. In what way?

A. Our working agreement provides if a man is not satisfactory to both companies we can remove them.

Q. Who has charge of that road?

A. The Louisiana, New Orleans and Texas Railroad Company.

Q. Of what road is that road a part?

A. Now I couldn't tell you that.

Q. Who are those checks made payable to?

A. Louisiana, New Orleans and Texas.

125 Q. Isn't it a fact, Mr. Wise, that that is a part of the Y. & M. V. system?

A. You could possible find out from the Secretary of State.

Q. Do you know?

A. I do not.

Q. Did you ever see an L. N. O. & T. car in the city of Helena?

A. I don't think so; I don't remember.

Q. Don't all of their switch engines that they operate in the city of Helena have Y. & M. V. on the outside of the switch engine?

A. I know it is on some of them. I have seen the L. N. O. & T. on some of them.

Q. On the switch engine?

A. Yes, sir.

Q. How long ago?

A. During the two years and a half I have been there.

Q. Is there any there now that you know of?

A. I couldn't say.

Q. Did you ever see a box car there with L. N. O. & T. on it?

A. I don't know.

Q. There is none there that you know of?

A. I do not.

Q. Do you know how they make their checks payable, how they are signed to their employees?

A. I don't know.

126 Q. Do you know how their passes to their employees are, over that railroad?

A. No, I do not.

Q. Who is the Superintendent of the L. N. O. & T. Railroad Company?

A. The man that has jurisdiction over the Terminal there is Mr. Porter of Memphis.

Q. At Memphis?

A. Yes, sir.

Q. He has charge of the Y. & M. V. to Memphis hasn't he?

A. Yes, sir.

Q. The same man has charge of both roads?

A. Yes.

Q. Did you ever see a passenger train run in the past ten years as an L. N. O. & T.?

A. I don't know how they run them.

Q. You have never seen one have you?

A. I don't remember seeing any passenger coaches.

Q. The L. N. O. & T. has no passenger depots or freight depots at Helena has it?

A. It has terminal work. In my former testimony there I testified that they had about four miles of track; as close as I can check it up from the figures I have in my office they have about fourteen thousand track feet, which would be about two and six-tenths miles.

Q. No, Mr. Wise, isn't it a fact that several years ago what is known as the L. N. O. & T. Railroad running from Memphis to New Orleans was sold to the Y. & M. V. people, which is now a

127 part of the Illinois Central?

A. I couldn't say.

Q. Who do you have your dealings with the L. N. O. & T.?

A. Officially?

Q. Yes, sir.

A. We deal mostly with A. H. Eagan, Superintendent of the Y. & M. V. at Memphis.

Q. You say he is General Superintendent of the Y. & M. V. at Memphis?

A. Yes, sir.

Q. Who else do you deal with regarding that road, most of it?

A. We have most of our dealings with him. Of course we deal with the Auditor and Superintendent, have some dealings with the Master mechanic.

Q. Those are the Y. & M. V. people?

A. Officials, yes sir.

Q. All of the officials you have any dealings with of what is known as the L. N. O. & T. are officials of the Y. & M. V. are they not?

A. Yes, sir.

Q. What length road is the Y. & M. V.?

A. I don't know the exact mileage; it is over one hundred miles though I am sure.

Q. Have they any stations at Helena, the Y. & M. V.?

A. No, the L. N. O. & T.

Q. Can the Y. & M. V. issue passages out of Helena?

A. I don't know about that.

Q. Don't they sell tickets out of Helena?

A. They sell tickets; I don't know if they are L. N. O. & T. tickets or Y. & M. V.

128 Q. What depot do you use at Helena?

A. The L. N. O. & T.

Q. That is the one that the Y. & M. V. uses is it not?

A. If you call the road that comes in there the Y. & M. V. then it is the Y. & M. V.

Q. Mr. Wise, isn't it a fact that on the station at Helena, that the initials on the road are Y. & M. V. on the station?

A. I don't know.

Q. Doesn't the Bulletin Board at Helena have Y. & M. V.?

A. I couldn't tell you.

Q. You never saw a Bulletin that had L. N. O. & T. did you?

A. I don't remember what is on the Bulletin Board.

Q. Mr. Wise, isn't it a fact that is just a dummy road, that is the Y. & M. V. from the Arkansas River west to Helena?

A. From the Mississippi River west, I believe everything on this side of the River is L. N. O. & T.

Q. They just call everything on this side of the River the L. N. O. & T.?

A. I think so.

Q. And that is operated under the same officials and under the same management as the Y. & M. V. road?

A. There may be some difference in the officials, in the directors, but the operating officials, that we deal with are the same officials as the Y. & M. V.

Q. How many switch engines do you use every day at Helena?

A. Two.

129 Q. Are they day engines?

A. Yes, sir.

Q. How many do you use at night?

A. Well sometimes we use one and again we don't use any.

Q. It takes two or three every day?

A. It takes two.

Q. Takes two or three every day and night to do the work?

A. Two days.

Q. And one night?

A. Well not always, sometimes we don't do any work at night at all.

Q. It requires this number of switch engines to do the work you have there?

A. And the L. N. O. & T.

Q. When you say we you mean the L. N. O. & T. do you not?

A. Yes, sir.

Q. At the present time, Mr. Wise, aren't you all putting up a round house yards at Helena to do your own work?

A. At the outer yard, that is three miles out of Helena.

Q. Isn't it your intention to do your own switching into Helena?

A. No, we don't own the tracks in Helena.

Q. Now I believe you said in your direct examination, Mr. Wise, that a third man on the switching engine would impair the efficiency of the force; is that so?

A. I think so.

Q. Just how, in what way would that impair the efficiency of the crew?

A. Well I think a foreman and two switchmen is sufficient to do the work, and if you have got an extra man that is not doing anything he is generally talking to one of the other men or doing nothing.

Q. Don't you think there is any places where the third man could be used?

A. I haven't seen any places yet.

Q. In your limited knowledge of switching you haven't seen any places where he could be used. How much time a day do you spend in the switching yards?

A. That would be pretty hard to say.

Q. Approximately how long—five minutes or ten minutes?

A. My office is in the yards at Harrison and I am there from about 7:30 in the morning until 5 in the evening. I am not out in the yards all of the time.

Q. Harrison is a city of the third class is it not?

A. Yes.

Q. How much time out of the month do you spend in the yards of a city of the second class?

A. I am in Helena about four days a month.

Q. How much time of that four days a month do you spend in the yards where switching is done observing how it is done?

A. Well I couldn't say.

Q. Approximately how long—an hour?

A. Well I am in the yards more than that when I am in Helena;

generally walking around over the yards a couple of hours nearly every trip I am there.

Q. What are you doing when you are in the yards a couple of hours?

131 A. Walking around and looking to see what everybody is doing, and the condition of the yard, cars and track.

Q. Walking around to see the condition of things. Now would a third man impair the efficiency of the force?

A. Well it is just a case if you have got too many people trying to do one thing you don't get anything done. In my opinion the necessity of the third man on the switch engine corresponds to the same necessity of having a driver for a man that is plowing with a single plow.

Q. You don't know of any place do you, Mr. Wise, where a third man would be a help to the crew?

A. Why I do not unless you could make a crossing watchman out of him.

Q. Did you ever notice switching done in the larger cities here in the State?

A. In Arkansas.

Q. Yes.

A. Why, I have been in the yards. I cannot say that I am intimately acquainted with the switching in the different big yards here in the State.

Q. You don't contend do you, Mr. Wise, that you are well enough acquainted with the conditions in the larger yards to know whether they need them or not?

A. No, I couldn't say.

Q. And as far as Hot Springs is concerned you wouldn't venture an opinion on whether they need a third man here or not?

A. I wouldn't think they do.

Q. You don't know?

132 A. No.

Q. You wouldn't testify from your knowledge as an expert whether they need one here or not would you?

A. No, I wouldn't.

Q. What is the duties of the foreman of the switch engine?

A. To look after the work.

Q. What does he do as a foreman, Mr. Wise, in looking after the work?

A. Well he attends to breaking up the train and handling the switch list and so on like that.

Q. Does he have to make trips to the patrons' house to talk over where to stop a car?

A. If there is a yard master with him why the yard master does that; if not, why the foreman does it.

Q. There is times when they operate a considerable distance from the yard house, when the switching crew operate at considerable distance from the yard office is there not?

A. Yes.

Q. At that time if the yard master is not near, why the foreman,

the switch engine foreman, goes over and talks with the industrial man as to where to stop a car does he not?

A. Yes.

Q. He has to keep in constant touch with the yard office does he not by phone message?

A. The foreman of the switch engine?

Q. Yes, sir?

A. Now I am speaking from our road; I don't think ours
133 does because we haven't any phone in our yards to keep in touch with. As a general thing though in large yards foremen keep in touch with the yard master about the work.

Q. That takes a considerable part of his time does it not?

A. I don't think so, not very much.

Q. What does he do when he is not looking after orders of the yard master stopping cars?

A. The foreman?

Q. Yes, sir?

A. Well he is out with the switchmen.

Q. What part of the switching duties does the foreman have?

A. Well now I don't know just what part he does perform further than what I have told you; that is he is supposed to supervise the work and to assist the other two men when it is necessary to expedite the movement of the cars and so on.

Q. You don't know anything else about the duties of the foreman besides keeping in touch with the yard office and talking with the different industrial house people about stopping the cars?

A. Certainly his duties are a great deal more than that.

Q. Do you know what they are?

A. Well I couldn't say; they are different in different places.

Q. Just name some of them, Mr. Wise.

A. Well the foreman going out here on the switch engine he is supposed to take out his switching list and see that the train is properly broken up or made up or switched and carry out
134 the instructions of the Yard Master.

Q. He is acting as supervisor there is he not?

A. He is.

Q. Does he have any active part in the switching?

A. As a general thing he is assisting the switchmen.

Q. In what capacity?

A. It is pretty hard for me to go into what all his duties are in connection with the man being in charge of the engine.

Q. What place does he have on the switch engine?

A. I don't know just what place he does have.

Q. You are not acquainted then with the duties of the foreman as far as switching the car is concerned?

A. No, not the actual work of the foreman.

Q. Now you have two other men there have you not?

A. Yes.

Q. What do you call those two men?

A. There is one man I believe they call the field man that rides the cars out; then there is a man that cuts them off.

Q. What do they call him?

A. I don't remember what they do call him.

Q. What are the duties of the other two men now with reference to the switching, Mr. Wise.

A. It is just what I have told you.

Q. Well I mean——

A. It is pretty hard to line up the duties that all of these fellows will do you know.

Q. Do you know just how they do this switching?

135 A. No, I don't, just exactly how they do it; I do not.

Q. Do you know the duties of each man?

A. Just as I have given them to you.

Q. Do you know the particular duties of each of the other two men on the engine?

A. Just as I have given it to you.

Q. What man is supposed to cut a car off from the rest of the string of cars?

A. Well there is a man assigned to do that work.

Q. Which one is he, do you know?

A. As I just told you there was a field man, and the other man generally cuts the cars off.

Q. Mr. Wise, suppose you had a switch engine with three cars on it, you are operating on a lead, you want to kick a car over on one of the industrial tracks, just how would that be done, what would each man do?

A. Well I didn't quite get your question.

Q. Al- right I will change it. Suppose you had a switching engine, you are operating on a lead, you want to kick a car over a public crossing on to the industrial track, just what would each man do in that switching?

A. It would be pretty hard for me to state unless I was out there looking at them.

Q. Would you know how that is done?

A. Yes, I think so.

Q. Just tell the Court how it would be done?

A. You had got a car in a lead——

Q. No; they are operating on a lead, an engine and three box cars, you want to kick a car over a public crossing from a
136 lead on to the industrial track; how would that be done?

A. I think you had better let some of these other men testify here and explain that to you that has been actively working in the yards.

Q. Well do you know how that is done?

A. I can do it al- right I think.

Q. Did you ever do it?

A. No, I haven't ever done it personally.

Q. Can you tell the Court how it is done?

A. Well I don't know that I could tell the Court just exactly how it is done.

Q. If you can do it yourself you can tell anybody can't you?

A. It would be pretty hard to tell just how the men would be placed and everything for me.

Q. Well who would cut the car off from the other, take one man for that wouldn't it?

A. Yes.

Q. Is a man supposed to throw a switch?

A. Yes.

Q. Take one man for that wouldn't it?

A. Yes.

Q. How about riding the car?

A. Well the man generally that throws the switch rides the car.

Q. He catches the car when it is kicked towards him and rides it?

A. Yes.

137 Q. Suppose the switch, Mr. Wise, is across the other side of the public crossing, what about it then?

A. Well I don't know, that is for the foreman to look out for and see that he gets across the crossing al-right.

Q. If you are operating on one side of a public crossing on the lead and the switch to the industrial track was on the other side of the public crossing, who would ride that car over the crossing?

A. You have got a foreman to help.

Q. One man to kick it off?

A. Yes.

Q. One man to throw the switch?

A. Yes.

Q. And the foreman to ride?

A. Well the field man rides cars. The foreman can cut the cars off for that matter and the other man could appear and see that they get across the crossing al-right.

Q. If the switch is on the other side of the crossing you would just let that car roll over the crossing by itself would you?

A. No.

Q. Well it would take one man to ride it wouldn't it?

A. Yes.

Q. And one man to cut it off?

A. Yes.

Q. And one man to throw the switch?

138 A. No, the man could go over and throw the switch and come back and ride the cars if he wanted to.

Q. The cars could be kicked and he would run back and catch it?

A. If you cut a car off, the foreman can cut the car off.

Q. Well who is going to throw the switch?

A. Well couldn't the second man throw it or the third man either. There is three men on the engine you know, and that is a pretty easy job for three men to handle one car, cutting it off and getting it across a crossing.

Q. That is your opinion about it?

A. Yes.

Q. Suppose there was a switch a half a block the other side of a public crossing going on to the industrial track, you were working

on the other side of the crossing, a man had to run down and throw the switch, would you kick that car down there?

A. No, I wouldn't kick a car across a public crossing; you shouldn't do that.

Q. Did you ever see it done?

A. No, I don't remember of seeing anybody kick any cars across a public crossing attached to an engine.

Q. As an expert switchman having a peculiar knowledge of such conditions do they do it, do they kick cars across crossings?

A. I haven't seen it done.

Q. You don't know about that?

A. No.

Q. It is a customary thing to have box cars on both sides of the engine is it not, Mr. Wise.

139 A. Well I don't know; you do sometimes.

Q. You often see that done do you not?

A. Yes.

Q. Isn't it done in Harrison?

A. I haven't seen it done in Harrison.

Q. It is done in larger Terminals is it not?

A. I haven't seen it done here.

Q. You know they do it don't you?

A. Yes, I think they do.

Q. Suppose they are operating on the line with say thirty cars, fifteen on each side of an engine, you are operating between two crossings, going back and forth there, if you had to kick a car at one end across a crossing, now just how would you work that with three men?

A. Had to kick a car across the crossing?

Q. Yes.

A. I wouldn't kick it over; I would just shove it over, put a man on ahead of the train and shove it over there. Now I don't know what the practice is around here, but it is against instructions to be kicking cars across public crossings, and when they do that they are violating their instructions.

Q. Well they do run up and down and across public crossings with a train do they not?

A. That is all right, but you don't run across them kicking cars loose from the engine.

Q. You can run across a crossing and then kick a car can't you?

140 A. After you get across the crossing, yes.

Q. If you are operating with thirty cars, an engine in the middle between two streets where traffic is, teams and pedestrians, street cars and so on, and you are switching there, how would you guard that train and prevent accidents, and then do the regular switching business?

A. Well that is an isolated case; you don't have that very often.

Q. Isn't it a fact that in Little Rock, Hot Springs, Fort Smith, and Texarkana and all of the larger yards you have that condition every day in the world?

A. Yes.

Q. Now how would you work that with a foreman and two men; will you just tell the court?

A. How would you switch across the crossing with them?

Q. Yes sir, with the engine in the middle?

A. Why I don't know just how I would. I would protect the crossing though. There is enough men there to protect the crossing al-right.

Q. You mean flagmen?

A. There is generally a flagman in such places as you have just mentioned.

Q. How many flagmen does the Missouri and North Arkansas employ in Arkansas?

A. I don't know just how many we have.

Q. Isn't it a fact that there is not one crossing out of ten that is protected?

A. One street crossing in Arkansas?

141 Q. Yes, sir.

A. Why I presume so.

Q. Have you a single solitary flagman at a public crossing that works after 6 o'clock at night?

A. I don't know.

Q. You never did answer how the cars would be kicked with the engine in the middle working between two roads?

A. They wouldn't be kicked; they would be pushed around with the engine.

Q. How would the engine operate?

A. I couldn't tell you just how the movement would be. It is pretty hard to try to play checker board you know with a matter like that.

Q. Do you know what the position of the respective switchmen and the foreman would be in that case?

A. Why I think so.

Q. How would they be placed?

A. In the case that you have just mentioned?

A. Yes, sir.

A. Well now what their duties might be and what they do is two different things. These men are supposed to protect it. Now I couldn't tell you just exactly what these men would do in a case of that kind or what their duties would be exactly.

Q. You are not sufficiently well acquainted with the switching rules?

A. With the detail of that switching I couldn't tell you just what they would do.

142 Q. You said that you wouldn't kick a car across a public crossing?

A. No.

Q. Isn't that done every day in the world?

A. Well I haven't seen it done.

Q. Have you ever been in the larger yards—Little Rock, Hot Springs, Fort Smith and Texarkana?

A. No, I don't remember any of those yards, only being through on the train.

Q. Would you just take the switch engine and push a car by and block it and then come on back down?

A. In getting across the crossing?

Q. Yes, sir?

A. Well as a general thing you know you don't have much switching to do across these crossings. You can generally clear your crossings and do your switching on the other side.

Q. You are testifying from your knowledge there at Harrison are you not?

A. We haven't a crossing there at Harrison that we have the same—

Q. How many cars do you have there in Harrison in a day to switch?

A. I suppose a couple of hundred.

Q. How many engines do you employ?

A. One.

Q. One day engine?

A. Yes.

143 Q. What is the largest number of engines that you employ in any one town in Arkansas on the Missouri and North Arkansas Railroad *Company*?

A. In the yards directly under our supervision we only have one.

Q. You have a limited amount of business?

A. Yes.

Q. You wouldn't attempt to testify, Mr. Wise, as to the regulations and conditions and necessities in cities where they employ from six or seven switch engines every day would you?

A. No.

Q. And where the traffic is great, and where they have a lot of pedestrians and wagons and teams?

A. We haven't that condition in any station on our road.

Q. What is a team track?

A. It is where business is unloaded.

Q. Where cars are spotted?

A. For unloading.

Q. And wagons and teams drive up there and take the produce out of a car and drive off?

A. Yes.

Q. They have to drive across these roads do they not?

A. On our road they do not.

Q. In the larger cities?

A. I suppose so if they cross the yards.

Q. In the larger cities the switch engines are moved up and down every five minutes of the day are they not?

A. I don't think so, not on team tracks, because team tracks are generally selected with a view of keeping—

144 Q. Well on tracks nearest to the team tracks, on tracks between team tracks and where wagons have to drive out, they have quite a bit of business over them do they not, Mr. Wise?

A. The tracks next to the team tracks?

Q. Yes, sir?

A. That is owing to conditions. In some places you know the team track is so constructed that it is away from the yards.

Q. They have them that way do they not?

A. They do in some places.

Q. Were you ever at the wharf in Little Rock?

A. What do you call that?

Q. The place known as the Valley Depot in Little Rock?

A. No.

Q. Did you ever see those yards there?

A. No.

Q. Did you ever see or take particular notice of any yard, Mr. Wise, other than your own yards in Arkansas?

A. Why I have noticed them, yes, but so far as the details of the work of the yards I don't know anything about it.

Q. Now, Mr. Wise, I believe you state that the foreman and the two helpers could cut the cars off when they are switching and properly attend to them?

A. I think so.

Q. How many would it take, does it take three to do that?

A. To look after the switching?

Q. Does it take three to throw a switch, cut a car and ride
145 it and safeguard the crossing?

A. I think two men can do it.

Q. You mean two men besides the foreman?

A. Yes.

Q. It is a fact is it not, Mr. Wise, that you often operate between two tracks with cuts of cars on either track, either side?

A. Yes.

Q. And that lots of times you run right up to crossings between two tracks?

A. Yes.

Q. And there is long strings of box cars lined up on both sides of the switch engines there?

A. Yes.

Q. Don't you think to properly protect the public at that crossing a man should be sent up to that crossing?

A. There is a man generally on the head car.

Q. Don't you think a man should be sent to that crossing before the cars are pushed across?

A. As a general thing in the yards of importance that you mentioned where a condition of that kind exists there is a flagman on the crossing.

Q. If there is not a flagman there don't you think, Mr. Wise, that a man should be sent up there to flag that crossing before any work is done there?

A. No; it is necessary you know to look out for the crossing; that is why you have got three men on the engine, to do the work and look out for the crossing. There is no instruction that requires a

146 man to go ahead and run the crossing; he must approach with care and look out for it.

Q. When you are operating on what is known as a lead, there is several tracks run off of the lead do they not?

A. Yes.

Q. And you kick a car into one track off a lead, then you kick a car into another track off a lead don't you?

A. Yes.

Q. You have a certain amount of switch engines to do a certain amount of work?

A. Yes.

Q. They have a certain number of trains to get out and they have to do this work?

A. Yes.

Q. All you know about it is, Mr. Wise, that they do the work?

A. Yes.

Q. You don't know how they do it or why they do it?

A. I have an idea about how they do it.

Q. They have to make a certain speed to get this work done do they not?

A. Yes.

Q. Do you know how they have to work in reference to speed in getting cars down the various tracks to get the work done?

A. No, I couldn't tell.

Q. But if they are operating between two long strings of cars at a crossing and the flagman is not there, in a city where teams and pedestrians are walking down the street, you think a man should be sent there do you not?

147 A. There is generally a man on the head car as you cross such places as that; sometimes a man runs out ahead of the train. They are not supposed to run on to crossings like that you know under full tilt.

Q. Isn't it a fact, Mr. Wise, that you often kick a car down one track and then run on down a lead?

A. Kick it across a crossing?

Q. No. You kick a car down the lead, then the switch engine with the balance of the cars goes on down the lead on across a public crossing?

A. No, you don't kick it across a public crossing if you are doing what is right.

Q. I say you kick a car down an industrial track while you are operating on the lead, and then the switch engine with the rest of the cars would go on across a crossing pushing them across that crossing?

A. You cannot do that without having a man on there if it is possible for him to get on there.

Q. Should be there should he not.

A. Yes, the man that rides the car into the industrial track, if you have a crossing to cross if he is following instructions should be on the head end.

Q. The man that rides them has to set the brake don't he.

A. Yes.

Q. The man that throws the switch is sometimes a half or three-quarters of a block away from the engine is he not?

A. In some cases, yes.

Q. Then you are back across a public crossing and they are supposed to catch that head car before it gets there?

148 A. Yes; but there is enough men on the engine to do it.

Q. With three men?

A. Yes.

Q. You think two men is sufficient to do the work?

A. Well a foreman and two switchmen.

Q. You think a foreman and one switchman can do the work?

A. On the Missouri and North Arkansas we have done it and we had no accidents, and after we put on the other man we had some trouble.

Q. You think it is safer with a foreman and one man than with a foreman and two men?

A. No, I don't know; I didn't say that.

Q. Now isn't it a fact, Mr. Wise, that the more men that are put on these engines the faster they can work, and they can more properly guard the crossings?

A. The faster you can work if you are in a hump yard you know.

Mr. Kinsworthy: We have no hump yards in this State.

Q. Well in any kind of yards.

A. No, I don't think so.

Q. Don't you think you can work faster with three than two, with a foreman and three men and work safer both for the public and the employees with three men than you can with two?

A. I don't think you can do it any better.

Q. They take a foreman and two men to properly switch across and operate cars across a crossing do they not?

A. Yes.

149 Q. Suppose you have got a cut of cars at both ends of the train, how are you going to guard the back end?

A. Let the back end rest while you are doing the work at the front end.

Q. Then you would work at the front end and then back up against the back end of the crossing without having anybody there?

A. No, send the other man back there.

Q. What is the length of a box car?

A. 36—34—40 feet.

Q. How many box cars do they switch in these yards as an average? Haven't you seen 40 or 60?

A. I haven't seen that many.

Q. You know they do have that many don't you.

A. I don't know.

Q. You know they do operate a large freight train don't you?

A. Yes, they have some large trains.

Q. Don't you know, Mr. Wise, if you were working with men

switching box cars at one end, that it would be impossible to get that work done and run clean across the back end of the train before you backed your cut across the public crossing; wouldn't that be impossible to get the work done and do that?

A. Well they do that.

Q. Now isn't it a fact that they don't ride the back of the train when they do that?

A. Well they are supposed to do that.

Q. Isn't it a fact they cannot do that?

A. They can do it.

Q. Isn't it a fact, Mr. Wise, that they cannot get the work out you give them to do and you hold them responsible to do and ride a car on the back part of a cut of cars while they have been switching at the other end, run all the way across down a string of 50 or 60 cars?

A. I don't thoroughly get your question.

Q. When you are working at the last car on the end of the switch engine, you had to switch that car, it takes all of these men to do that and to guard a crossing, say you have 25 or 30 cars up at the other end of the switch engine, the car has to back up, the engine.

A. Yes.

Q. Now isn't it an impossibility for two men to work in the yard and get the work out with the work you give them to do and guard the back end of that train?

A. No, I don't think so.

Q. How would you do that?

A. I would do it just like we have been doing everything else here we have been talking about.

Q. Just tell the court how you would do that. Suppose you were a switch engine foreman, and you had two helpers, you are switching box cars on the end of a long cut of cars across a public crossing, and then you had to back up and there is a long string of cars on the other end of the engine, you had to back up across a public crossing, how would you get a man on the back part of that train?

A. Well you send him back there.

Q. Would you stop your train and send him back there?

A. You certainly would.

Q. About how long would it take to do that?

A. I don't know just how long it would take to do it, but that is the instructions to get a man back up there to do it.

Q. You don't know whether they do it or not do you?

A. I couldn't say if they do or not, but it is the intentions of all the Railroad Companies to protect those crossings that way.

Q. It is a fact isn't it, Mr. Wise, that you have very little actual knowledge of how that switching is actually done?

A. Well in a general way as I told you awhile ago.

Q. But as far as practical experience and actually knowing how it is done across these crossings and how a box car is kicked across the crossing—

A. No, I haven't a knowledge of these different yards, just exactly how it is done.

Q. And as far as running a cut of cars with an engine across a public crossing?

A. I think I do. I think I can go out and do it. I cannot say I can figure it out exactly here for you how it is done.

Q. If you can do it I wish you would please tell me how you would ride the back end of that car in the distance I just gave you?

The Court: I think you have asked that question three or four times?

Q. What is the condition of the track that is in Helena, Mr. Wise, with reference to curve, industrial houses, industrial track and so on?

152 A. Well we have some curves there. In fact the L. N. O. & T. has an incline there that is one of the heaviest grades I guess that is operated on anywhere in Arkansas, unless there is similar inclines.

Q. Is that on the main line.

A. That is on the main line from the levee down to the ferry boat, that is their main line.

Q. The yards there are very heavy curved are they not?

A. There is some curves in the yard.

Q. Do you know where the yard office is there?

A. Yes.

Q. That is right in the middle of the yards is it not?

A. The yard office.

Q. Yes, sir.

A. No, it is not in the middle of the yard.

Q. Well switching tracks run all around it do they not?

A. Yes.

Q. Isn't it a fact, Mr. Wise, that that yard office at Helena is constructed in such a way as to make blind curves, that is I mean you cannot see around from one man to the other because of that yard office at Helena?

A. In the L. N. O. & T.?

Q. Yes, sir.

A. I don't think so. I think you have got a pretty good view there from where we cross the Iron Mountain back to the end of the freight station where all of the work is done.

Q. Isn't that the condition of the Iron Mountain with reference to the yard office and the tracks?

A. I couldn't tell you about the Iron Mountain. I don't
153 know just exactly where their yard office is located, but their tracks are paid out in the same direction as the L. N. O. & T.

Q. What about the industrial tracks there operating around different buildings and houses, some very sharp curves there are there not?

A. Yes, and stiff grades, but it is a fact that you cannot hold but about one or two cars at any of those places with an engine.

Q. Now there is some of those tracks there when you are going down hill you can haul as many as you want can't you?

A. Yes, but you don't have the cars to go down hill with.

Q. Isn't it a fact in those yards there in some places you cannot see four car lengths from one man to another?

A. I don't know of any such places; I don't recall and such places.

Q. What side of the engine does an engineer sit on?

A. The right hand side.

Q. He is the one that takes the signals is he not?

A. Yes, the fireman also sometimes.

Q. Suppose a curve curves in so as to throw the engineer away from the rest of the crew, how would they signal him, Mr. Wise?

A. Through the fireman, get it on the other side.

Q. Suppose they are one the same side as the engineer?

A. They can get over on the fireman's side; they can generally get around some way and signal.

Q. Suppose you had an engine in the middle of a cut of cars there and they were operating on one of those curves?

154 A. I don't think there is any place in Helena where you can obstruct the view of three men; I don't think they haul enough cars over any place there to obstruct the view of three men from the engineer.

Q. Suppose you have two men on the back end, the rest of the men are up at the front end, isn't it a fact there are lots of places in that yard, Mr. Wise, where one man on the back end of the engine cannot signal the engineer?

A. One of the other men could get it and help him if they are going back the other way.

Q. If they are switching from the far end and have to come back and help him signal the engineer?

A. Yes.

Q. Do you know what a draw bar is?

A. Yes, sir.

Q. What is a draw bar?

A. A draw bar is the end of a car; it is the draw head in the end of the car.

Q. What do they use that for?

A. Pulling the cars.

Q. What is the weight of those things?

A. A draw bar I guess—I don't know just what a draw bar will weigh.

Q. About how many men will it take to lift one of them?

A. Two men can lift one.

Q. Switch engines often operate out on the main line where passengers trains operate do they not?

A. Yes.

155 Q. Do you ever have any such thing as a draw bar pulling out?

A. Yes, they do pull out.

Q. When a draw bar pulls out, how many men does it take to roll off a draw and pull off?

A. I guess one man could roll off a draw bar for a train and get it on. You see you have got three to do the work.

Q. It would take two men to roll off the draw bar and couple the engine up would it not?

A. Yes.

Q. Did you ever see that performance done?

A. I don't remember of ever seeing that done.

Q. Well if it takes two men to do that, Mr. Wise, and you are operating out on the main line of the passenger tracks, and your engine is in the middle of a cut of cars, with three men how would you break that train?

A. When anything like that happens you generally send out the switchman, and the engineer and fireman goes out and helps them.

Q. You have to send out and get the rest of the crew to do that. Isn't it a fact that you cannot get an engineer or foreman to do anything like that?

A. Well they do.

Q. Did you ever see one do it?

A. Yes, I have seen an engineer and fireman help do anything.

Redirect examination.

By Mr. Kinsworthy:

Q. Now, Mr. Wise, take your road from Joplin Missouri, 156 to Helena, do you have any such switching on your road as the attorney on the other side has been asking you about, where you have a cut of cars on each side of the engine and kicking cars across the crossing?

A. No, sir.

Q. Is there any difference in the manner of doing switching in one State and in another?

A. No, it is generally done about the same.

Q. Railroadng is the same everywhere you find it?

A. Yes, sir.

Q. Is there any point on your road that the conditions expressed by the gentleman about the kicking of cars both directions from an engine is in force?

A. No.

Q. Where it is necessary to do it?

A. No.

Q. Is there any point on your road where switching is done where four men are necessary to go with an engine?

A. I don't think so.

Q. Isn't it a fact that where you are about to cross into an industrial track that you generally have one or two cars to the engine?

A. That is about what we have; sometimes we have more of course.

Q. Isn't it a fact that the industrial tracks generally hold from two to four cars?

A. Well some hold more than that, but our industrial tracks won't hold much more than that. They are generally saw mill tracks, four or five or six cars, something like that.

157 Q. Well these industrial tracks going to sawmills where they hold more than two or three cars, isn't it a fact they are generally in the outskirts of towns where there are no crossings?

A. Yes.

Q. As I understand you to say at all towns on your road that the third helper is not needed at all?

A. I don't think so.

Q. And that the foreman and the two helpers can do the work as well without that man as they can with him?

A. I consider it so.

Q. And you are doing it now?

A. We are.

Q. Do you do it in Joplin, Missouri?

A. Yes, sir.

Q. How large is Joplin?

Mr. Jones: We object to that testimony. It is outside of the State of Arkansas.

Mr. Kinsworthy: Railroading is railroading anywhere you go. I expect to prove that in all of the States around Arkansas that they don't have the third man that we are required to have under this act; that in large cities like St. Louis, Kansas City, Joplin, Springfield and other cities where they go across tracks like we do and operate under the same rules we do, that this switching is done and all the switching is done with a foreman and two helpers.

The Court: On the proposition of whether or not the switching crew provided for by this Act is reasonable or necessary the experience and conditions in other cities of the same size and 158 character as described in this Act where like conditions prevail, exact conditions prevail, under similar circumstances would be competent I think.

To which ruling of the Court the State at the time excepted and asked that her exceptions be noted of record, which was accordingly done.

Q. Take Joplin, Missouri, how large is Joplin?

A. I think about 35,000.

Q. Well is the switching done there across crossings like it is in Helena?

A. There is one crossing about two-thirds of the way into the yard.

Q. Do you switch across this crossing?

A. Yes, sir.

Q. Is there much switching done across that crossing?

A. Yes, sir.

Q. It is a grade crossing is it?

A. Yes.

Q. In switching across this crossing that you speak of in Joplin, how many men do you have to do it?

A. There is a foreman and two helpers.

Q. Now take for instance as to Helena where you do your switching there, you go across crossings don't you?

A. Yes, sir.

Q. Numbers of them?

A. Yes, there is quite a number of crossings.

Q. You use two engines there every day?

A. Yes, sir.

Q. How are these cars handled and the switching done
159 across the crossings at Helena with a foreman and two helpers.

A. Yes, sir.

Q. Have you had any accidents there on account of it?

A. I don't know of any accidents.

Q. You don't have the extra man at all?

A. No, sir.

Q. And all along your line all of your switching of your cars, breaking up of the trains, putting them into the industrial tracks and placing them on the various tracks is done with a foreman and two helpers?

A. Yes, sir.

Q. And you know of no accidents now, cannot call to mind any?

A. No, sir.

By Mr. Jones:

Q. The conditions in Arkansas that you speak of, you base that on your experience here with the Missouri and North Arkansas do you not?

A. Yes, sir.

Witness excused.

160

Testimony of J. W. Dean, Recalled.

J. W. DEAN, being recalled to the stand by the State for further cross-examination, testified as follows:

By Mr. Jones:

Q. You are General Superintendent of the Iron Mountain at Little Rock are you not, Mr. Dean?

A. Yes, sir.

Q. How long have you been the General Superintendent?

A. Since May, 1912.

Q. Did you ever act as Terminal Superinten-t?

A. Yes, sir.

Q. Did you ever act as Yard Master?

A. Yes, sir.

Q. How long has it been since you acted as Yard Master?

A. About 15 or 20 years.

Q. Is it your experience while you were Yard Master from which you base your opinion regarding the switching conditions?

A. That and the experience of being in charge of various Terminals and Divisions of Railroad.

Q. Now the Yard Master is the one who actually looks after the switchmen is he not?

A. Yes, sir.

Q. And he is the one they are responsible to and accountable to?

A. The Yard Master is responsible for the operation of the yard.

Q. Now where did you act as Yard Master, Mr. Dean?

161 A. I had that experience in Colorado.

Q. What was the average tonnage car when you were Yard Master?

A. About 36,000 capacity—60 to 80; some were smaller than that.

Q. What is the average car that they use now, capacity?

A. 60 to 100.

Q. You use higher cars than one hundred too don't you?

A. That is 50 ton cars.

Q. What is the highest cars you use on your system, Mr. Dean?

A. One hundred thousand capacity.

Q. You frequently have those there at Little Rock do you not?

A. Yes, sir.

Q. You acted as Superintendent of Terminals at Little Rock did you not, Mr. Dean?

A. I was superintendent of Terminals at Little Rock.

Q. When were you Superintendent of Terminals there?

A. 1905.

Q. How many men did you use on the switch engines there at that time?

A. Two and three.

Q. You used three on some engines then?

A. Yes, sir.

Q. That is a foreman and three helpers?

A. Yes, sir.

Q. Were they on the switch engines when you took the position at Little Rock?

162 A. Some of them were.

Q. Did you pull them off?

A. No sir.

Q. You left them on there. Can you think of any place, Mr. Dean, where a third man, a foreman and three helpers, would be of more advantage to the Railroad Company or any advantage whatever than two men, a foreman and two helpers; take Little Rock or the Argenta yards for instance?

A. In the south end on the curve we should have three men on the engine for the company's convenience, not for any crossing protection or for any safety; and also with the engine commonly known as the hold engine in the Argenta Yards.

Q. What about the Rock street crossing there, Mr. Dean; should there be three men on there?

A. There is a flagman at that crossing.

Q. Does he work there day and night?

A. I think so; at least part of the night.

Q. You are acquainted with the conditions at the Valley depot in Little Rock are you not?

A. Yes, sir.

Q. The industrial track or what is known as the "alley" track right next to the building; how close is that to the north side of the building there, Rock Street?

A. It clears a car.

Q. Just clears a car, that is two or three feet or four feet?

A. About four feet.

163 Q. Is there a flagman there at night?

A. He is a part of the time; I don't know if he is all night or not.

Q. But you can think of some instances where it would be of advantage to have the third man on the engine?

A. For the company's convenience to expedite the switching, but not for safety.

Q. You have a certain amount of switching to do have you not, Mr. Dean; give the men a certain amount?

A. Yes.

Q. They are required to do this amount you give them are they not?

A. They are required to do as much as they can safely are our instructions.

Q. But the men are regardless of the time necessary to do it?

A. Safety first.

Q. You have seen box cars kicked across public crossings without the man riding them have you not?

A. Not without taking some severe action with the man.

Q. You have seen it done have you not?

A. The man would lose his position.

Q. Now the Iron Mountain Railroad has considerably more business in this State than it did when you were Yard Master does it not?

A. I don't know how much business they had here when I was Yard Master.

Q. You know there has been an increase?

A. Business has been increasing gradually on the Iron Mountain, yes sir.

164 Q. They didn't have the number of trains in the yard then as they do now?

A. No, but the switching is a great deal easier to do than it ever has been. They have got about the same number of tracks in Argenta today that they had when I come here.

Q. They handle more cars?

A. I don't think they handle as many.

Q. They are larger cars are they not?

A. Yes, every year the capacity of the cars has been increasing.

Q. How long has it been, Mr. Dean, since they burned wood on these engines?

A. That was before my time on the Iron Mountain.

Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Dean, you state that while you were Superintendent of Terminals at Little Rock there were two engines that you had three helpers on?

A. Yes, two or more; I cannot remember exactly how many; but I have handled yards in different places where we need more than two helpers to expedite the switching.

Q. That is in order that they could do better switching?

A. Yes, and save the labor of the engine; have considerable business and don't want the engine standing still, want two men to transmit signals from the man in the field.

Q. Before this law was in force where it took one man more to keep up with this work you had him on?

165 A. I had him on when I was in charge of Terminals there in Little Rock.

Q. You didn't put him on to protect crossings?

A. There was no safety considered.

Q. Take what is the south end of the Argenta yard, are there any crossings in the yard?

A. No crossings there.

Q. The engine you had the third man on as I understand didn't work at a crossing at all?

A. Not in the south end.

Q. How many switch engines had you at that time do you remember in the State of Arkansas?

A. Well I had charge of Argenta Terminal at that time; I think we worked out 17.

Q. And out of the 17 about two it was necessary to have the third man on?

A. I think there was more than that.

Q. About how many?

A. Possibly five.

Q. Where did these engines work that you had the third man on?

A. I think one worked at the Union Station and at East Little Rock, and along with a tramp engine. The tramp engine had to work on the main line considerable, and it was necessary to use that man to protect his train while they were switching around the compress.

Q. Take for instance the man you had at Union Station, do you have any crossings there?

A. No grade crossings I think.

166 Q. Isn't it a fact that there isn't a grade crossing from the time you leave the shops at Argenta until after you pass Third street coming this way, two or three blocks this side of Union Depot?

A. There is no crossing from the Viaduct right at the Fort Smith crossing until you get south of the Union Station.

Q. How far south?

A. Well I expect 1500 feet, something like that.

Q. I believe you say that you have to have the third man under the law now at Hope?

A. Yes, sir.

Q. And all of the engines at Hope?

A. Yes, sir.

Q. Little Rock, Newport, Texarkana, Paragould, Helena, Pine Bluff, El Dorado—

A. Yes, sir.

Q. Van Buren?

A. Yes, sir.

Q. Fort Smith?

A. Yes, sir.

Q. Wynne?

A. Yes, sir.

Q. McGehee?

A. Yes, sir.

Q. Hot Springs?

A. Yes, sir.

Q. Are you familiar with all of those yards?

A. Yes, sir.

Q. You take Hope for instance. You heard the questions asked Mr. Wise about if they would take a string of cars at each end of the engine and were kicking them across a crossing, if it would be necessary to have a third helper; do you have to do that at Hope?

A. We switch cars there. We are not permitted to kick them over a crossing.

Q. Do you have to have cars at each end of the engine kicking them both ways at Hope?

A. No, that is an unusual procedure.

Q. Have you got a track at Hope that you could do that with?

A. Only with the two cars.

Q. Take the track at Hope, isn't there an occasion there where you ever needed the third helper?

A. In my opinion, no.

Q. Take for instance the switching crew—you have an engineer and a fireman, a foreman and under the law have three helpers—before you had two helpers?

A. Yes, sir.

Q. Suppose you had two helpers, what would be the duties of each man, the foreman and the two helpers?

A. The foreman would direct the work in a general way. He would have to get the switching list from the agent or whoever he reported to in regard to his work; switch the cars according to the list he got and put the cards on the car, and after they are switched to properly distribute them to different industries on the railroad and wherever they belong.

Q. As I understand, the foreman of the switching crew is what a conductor is to the train?

A. Yes, sir, exactly.

168 Q. Before the engine had started out with the work he would go to the shop and get a card with the work there to be done.

A. Generally yes.

Q. Take a place like Hope I am talking about?

A. Yes.

Q. Then he would go down into the yard and get the cars and switch them wher-ver they belonged?

A. Exactly.

Q. While he is switching these cars where they belong he would be with the engine wouldn't he?

A. As a rule, yes.

Q. That would be his duty to be there wouldn't it?

A. His duty to be there or pretty close by to see that the work is properly performed.

Q. Suppose they are switching with two helpers, wouldn't the foreman give the signals to the men?

A. That is part of his work.

Q. Just go ahead. Suppose you want to switch a car on the side track, tell me how they would do it?

A. Pick the car up the track, one member of the crew throw the switch, shove it in and cut it off.

Q. One man throw the switch and you shove the car into the side track and they cut it off and go on?

A. Yes, sir.

Q. Suppose they are working on the lead where they are kicking in there?

A. Sometimes it is necessary for the foreman to cut the cars and throw the switch. Sometimes it is customary for the man following the engine to cut cars. Generally the man in the field cuts the cars, makes the coupling and sets the brakes if they are on an incline, to hold them back.

169 Q. Mr. Dean, do you travel all over your system?

A. I am on the road about three-fourths of the time.

Q. Do you go over the yards at the various places where switching is done?

A. I make a practice to.

Q. Then are you familiar with all of the places just mentioned above, and the yards at those places?

A. Pretty familiar.

Q. I will ask you if there is any place outside of Little Rock in any of the yards mentioned where you have to use a third man under this law, that it is necessary to have that third man?

A. No, it is not necessary.

Q. I will ask you if the third man would add anything to the public safety at crossings?

A. It would not.

Q. Could they in these other yards get the train men to do any more work with the third man than they could without him?

A. It may be they could in some of the yards.

Q. Under some conditions?

A. Under some conditions, but that would be a matter for the Superintendent of the Division to decide; it wouldn't be a matter of safety, it would be a matter of expediting switching.

170. Q. It would be a matter of expediting switching?

A. Yes.

Q. But in no case in the matter of safety would it add anything to put a third man on?

A. No sir.

Q. Now suppose that a switch engine at Little Rock for instance would start out to Dickinson Brick yard to carry a string of cars out there and set them in one of those tracks; what could a third man do if he went along?

A. The best place for him in that work is on the end of the car or somewhere out of the way.

Q. Now they would take the string of cars from Argenta wouldn't they?

A. As a rule, some track in the yard there.

Q. In going to Dickinson's Brick yard they would just pull that as a train would they not?

A. Go out there just the same as a local freight would.

Q. Just go ahead now, Mr. Dean, and describe the actions of those people from the time they leave Argenta with the car until they get out to Dickinson's Brick yard and come back?

A. They would pick up the cars on the track in Argenta yard or at Union Depot, wherever they may be; proceeding to the Dickinson's Brick plant and place them in there, and probably put out the cars ready to move and weigh them and then run to the yard and set them in the yard for the breaking up engine to switch.

Q. Where would the switching naturally be done?

A. There would be some switching at the plant of course.

171. Q. The switching in and out of the cars would be done at the plant?

A. Yes, spotting cars at certain parts of the plant.

Q. Is there a crossing where that plant is?

A. I am not certain; I haven't been out there for a long time.

Q. Take the switching that is done up at the Big Rock crusher, is that done the same way?

A. The same way.

Q. Is there a crossing up there?

A. I don't remember; there is a crossing near there, but not at the plant.

Q. Now suppose you go down to switch into the Buckeye Cotton Oil Company—are you familiar with that track?

A. Yes, sir.

Q. When you take your cars down there is there a single crossing you have to switch across?

A. I think there is one.

Q. That is out in an open field?

A. Yes, sir.

Q. When a train comes into Little Rock that is to be broken up and switched, where is it broken up?

A. It is received in the main yard or reception yard.

Q. Now how do you break that train up.

A. After arrival the conductor generally leaves his way bill in the yard office, and the yard clerks make out cards, and there is a man goes out in the yard and tacks the card on the side of each one of the cars; after that is over the Inspector inspects the train, and

172 there is an engine there for the purpose of taking those cars and placing them on the different tracks assigned.

Q. What do you call that, what kind of switching do you call that?

A. Well that is the train yard or break up yard or the making up of trains.

Q. That is what is called breaking up trains is it?

A. Yes, sir.

Q. Whereabouts is that done?

A. On both sides, the north and south ends of the yard in Argenta.

Q. Is it done in the private yards of the Railway Company?

A. Yes, sir.

Q. The other kind of switching is what is called industrial switching isn't it?

A. The other I have just mentioned to Dickinson's and the stone quarry work, that is industrial switching out there, but the other is all done in the train yard, and at Argenta there is only one crossing involved there, maybe two.

Q. Take the various mercantile concerns and things around Little Rock, like Plunkett Grocery Company, you are switching in there continuously—are you not to that track?

A. Well not continuously.

Q. Almost daily?

A. A great many cars come in on various trains for people on those tracks. I don't know how many cars those industrial tracks hold, but each man has a space assigned to him that will

173 only hold two or three cars.

Q. Well in switching to those tracks how many cars does the engine generally take, going say to Plunkett-Jarrell to put a car in there?

A. Plunkett-Jarrell wouldn't take over two or three.

Q. Say to Penzel Grocery Company?

A. About the same number, maybe one or two.

Q. Aren't they a fair example of the industrial switching at Little Rock?

Mr. Jones: I object as leading.

Q. Take Pindell Grocery Company and Plunkett-Jarrell Grocery Company; are they fair examples of the mercantile companies that have switching done in Little Rock.

A. They are.

Q. Then in taking cars to industrial tracks of that kind, how many cars would they take at a time?

A. That would vary; on some occasions they would handle from 15 to 50 cars to East Little Rock, and there they would spot those

cars on these tracks that come by, but as a rule the cars for this industrial East Little Rock are made up in a solid train and hauled to East Little Rock where an East Little Rock engine takes them and distributes them to the various industries, and they will make a run with two or three or a single car or whatever is necessary; or sometimes they have more to go in, maybe have 15 or 20 cars and put them all in at once, quite a job.

Q. If I understand, after the cars come into Argenta for 174 these industries, they would be hauled across the bridge, fifteen or twenty cars, or more, at a time, and then they would be switched to the industries?

Mr. Jones: I object as leading.

The Court: Objection sustained.

Q. Is that the way they would be hauled?

The Court: Don't answer that.

Q. Well how are the cars then hauled from Argenta?

The Court: Objection sustained.

To the above rulings of the Court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

Q. Now cars reaching East Little Rock, how are they handled from East Little Rock to the industry?

A. By the East Little Rock switch engine from a point in the East Little Rock yard.

Q. In going to the industry sat at Plunkett-Jarrell how many cars would they take?

A. All the way from one to three or four along there; sometimes they take fifteen if they have a great many industries.

Q. In only two tracks, four cars, can be put on the tracks at Plunkett-Jarrell's, how could they take 15 in there?

Mr. Jones: We object.

A. One long train serves several industries and in order to do the work in there quite often you will have to pull the entire train to spot the cars in there at a certain plant, certain 175 house, or against a certain door. It may be that while they are doing the work at Plunkett-Jarrell's they will have cars for the other people at the same time, and they will try to make those moves at the same time in order to keep from disturbing the people; as a rule they are very short moves and a short number of cars.

Q. As I understand, that would be a short move?

A. Yes.

Q. When they get ready to push in the car on the industrial track of the Plunkett-Jarrell, how many would they push in, how many could they push in?

A. Doing the work for Plunkett-Jarrell and only had two cars only shove in the two cars for him.

Q. Along any other industry track it would be the same thing would it not?

Mr. Jones: We object.

The Court: Objection sustained.

To which ruling of the Court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

Q. Now in pushing in two cars to Plunkett-Jarrell Grocery Company what could the third man do?

A. He would not be needed in the performance of that work.

Q. In taking cars from Argenta to East Little Rock what could a third man do?

A. He could ride on the train.

Q. In pushing the cars from East Little Rock up to the industrial track to distribute them to the various industries what
176 could a third man do?

A. There is no particular use for a third man in a case of that kind.

Q. Is there any particular use for the third man in any case; if so, mention what it is?

A. You take a hump yard——

Q. We have no hump yards in this State.

A. That is one of the cases where we need more than two men.

Q. In the yards in Arkansas?

A. You need them to expedite the movement of cars; save the labor of your engine around curves, but so far as the safety is concerned one man can do all of the work?

Q. How many switch engines have you at work today in Arkansas, do you know as a rule?

A. I can refer to the memorandum here.

Mr. Jones:

Q. What is that memorandum?

A. It is a personal memorandum of my own in regard to the number of engines and cars handled at the various yards. (Witness refers to his memorandum) Now at Little Rock we are working about seventeen; in Hope one; Newport one; Texarkana—seven; Paragould—two; Helena—runs from four to six; Wynn—one, occasionally two there; McGehee—three and four; Pine Bluff—runs two and three; Van Buren is two and three; Hoxie is two and three; Fort Smith is two; El Dorado—one; Gurdon—one.

Mr. Kinsworthy:

Q. Hot Springs—how many switch engines do you have here?

A. They work one and two.

177 Q. Now out of the number of switch engines that you have mentioned that you use in Arkansas, how many of those switch engines, if any, would a third man do you any good on?

A. I think about five.

Q. Where would they be?

A. In the breaking up yard in Argenta, and the passenger yard at Little Rock.

Recross-examination.

By Mr. Jones:

Q. Now you say you had three helpers besides the foreman on some of these switch engines when you were Superintendent at Little Rock, Mr. Dean?

A. Yes, sir.

Q. Were those pulled off after you left?

A. I am not certain.

Q. Well when you got back were they there?

A. They were on some of them.

Q. Some of them had been pulled off hadn't they, Mr. Dean?

A. I believe so.

Q. You though- as General Superintendent those three men on these switch engines were necessary did you not?

A. Wherever I placed them I thought so, yes sir.

Q. Now those five switch engines that you have mentioned have a certain amount of work to do have they not?

A. Yes, sir.

Q. And they have to get out so many trains a day?

A. They have to do the best they can to keep up the work in that end of the yard, yes sir. That is the reason the matter
178 is left in the discretion of the Superintendent to put on just as many switchmen with an engine as he needs to expedite the switching; it is not for safety.

Q. It is where there is a rush or unusual amount of business that you need this third man?

A. A certain number of cars out there, and certain switches in a given time to keep the trains moving if the Company wanted to do this work without delay or where curves are in handling a good many cars, they would have to wait if they didn't have the third man on there until the other man could come around and see his signal.

Q. If you had this amount of work to do by a switch engine the three men could do it without being rushed as much as two couldn't they, Mr. Dean?

A. In these places where we think it is necessary to have more than two men, yes.

Q. They could do it quicker than two men?

A. That is the reason we put them on.

Q. It wouldn't take each man to rush things through as fast?

A. The work would go ahead just about as fast as far as the engine is concerned.

Q. But the individual men?

A. He wouldn't work any faster.

Q. Railroadng is a hazardous business isn't it?

A. Some of us have lived a great long time.

Q. But you have a great many killed?

179 A. Great many killed in other ways too.

Q. If a man will take his time at a thing and don't have to rush through a thing as fast, it is safer for that reason isn't it, Mr. Dean?

A. Yes; I can take an engineer on the engine and a train of forty cars and cut it and switch each separately.

Q. You wouldn't consider the average switchman could do that would you?

A. Yes, sir.

Q. They don't do it?

A. No sir.

Q. You wouldn't trust one of your trains with them when they were pulling trains?

A. Yes. I have men working on this road I would trust with any kind of a train.

Q. You would put two men on all of the switch engines, but you had three men on five before the law was passed.

A. I say one man could do it.

Q. You had three men on five switch engines did you not?

A. Yes, sir.

Q. That is of course because you needed them there?

A. To expedite matters.

Q. Suppose you have a rush here at Hot Springs, a Fair, or some unusual occurrence—would you put an extra man here?

A. It is not customary to put an extra switchman here, but an extra foreman.

Q. As a matter of fact don't that man act as a switchman?

A. He acts in the capacity of Yard Master.

180 Q. When you are in an unusual rush here at Hot Springs and you have on that other man, don't he help to do the switching or do you know whether he does or not?

A. I have never seen him doing any switching and I have been over here during those times; he directs the work as the Yard Master would.

Q. Who was that man you had here last, do you remember?

A. No, I don't remember.

Q. As a matter of fact you don't know whether or not he actually helped do the switching or not do you?

A. He didn't do any switching when I saw him, and I was around the yard considerable.

Q. Just while you saw him he wasn't switching?

A. He was not expected to do any switching.

Q. Now you operate passenger trains down and through the yards at Union Station do you not?

A. Where, at Little Rock?

Q. Yes?

A. Yes, sir.

Q. Sleepers are set out there are they not?

A. Yes, sir.

Q. Switch engines are operating in the same yards are they not?

A. Yes, sir.

Q. They move those cleeper cars do they not?

A. Yes.

Q. They move passenger trains loaded with passengers?

A. Yes.

Q. The yards are congested with trains there are they not at times, several trains there?

181 A. I have never seen the yard congested so we couldn't handle the business convenient.

Q. You have several trains there do you not, Mr. Dean?

A. We have also several tracks.

Q. That takes up quite a bit of space in the yards?

A. There is a track provided for all of the trains coming in.

Q. And switch engines operate up and down those lines. You spoke of the Dickinson Brick yards at Little Rock, those brick yards are not within the city limits of Little Rock are they, Mr. Dean?

A. I think not.

Q. They have nothing to do with Little Rock proper, how the switching is done there?

A. No; the same crew that performs the work at Dickinson's performs it at Little Rock.

Q. Now what is the condition of that track from the point where your track leaves Argenta until it reached the end of the city limits of Little Rock going out to the Dickinson Brick yard with reference to curves

A. There is several curves in there.

Q. It is a very crooked yard is it not, Mr. Dean?

A. Several curves in there, yes sir.

Q. As a practical railroad man Mr. Dean, isn't it a fact that when you are operating on curves and switching on curves that you have trouble transmitting signals?

A. If a man cannot see it there they have got to place themselves in a position where they can.

Q. You said they would carry how many cars out to Dickinson Brick yards as a rule?

182 A. I am unable to tell you exactly. I suppose from the reports I get of business there it runs all the way from five to eight cars a day.

Q. You often have more than that, Mr. Dean?

A. We may have, but going on the general proposition as to business.

Q. It is difficult to transmit signals going out that line is it not on account of the curve?

A. It is no more difficult for a switching crew than it would be for a local crew with the same number of cars.

Q. A local crew has the right of way doesn't it?

A. So does a switch engine when it starts out.

Q. A local crew, the engine will be attached to the front end of the engine will it not?

A. Yes, sir.

Q. Switching crews lots of times push them out do they not, box car going first?

A. Occasionally, yes.

Q. That is the condition there all of the time isn't it, Mr. Dean?

A. As a rule it is, yes.

Q. If those yards are crooked there and you have trouble transmitting signals, and you have an unusual number of cars going out there, wouldn't it require several men to transmit the signals?

A. No more than you would on a local freight train.

Q. The difference if the engine is on the head end and 183 the engineer sees where he is going makes a difference doesn't it; if the engine is attached to the head end of the train and pulling the train is different from the engine being attached to the end of the train and pushing it?

A. There is no difference as far as the safety is concerned; signals can be passed or men can operate the brakes if necessary.

Q. If there is a long string of cars and you are approaching the crossing and you have a man on the head end and you are pushing the cars out, you might need several men in places there to transmit a signal would you not?

A. No, not any more than you would on a local freight train if they are shoving the train ahead in the same manner.

Q. A local freight train has a conductor and three brakemen does it not?

A. Yes, sir.

Q. Four men on the local?

A. Yes. One man carries freight; generally try to have a good, stout man on there to unload freight.

Q. You think the same number of men that transmit the signals on the local freight could transmit them on the switching train?

A. Yes, or any other number of men on the like number of cars.

Q. You spoke of Buckeye Cotton Oil Company; it is not in the city of Little Rock is it, Mr. Dean?

A. No sir.

Q. That is out of the City limits of Argenta?

184 A. I think so.

Q. Not a city of the second class out there either is it?

A. No sir.

Q. Well how about the Rock Crusher that you spoke of; is that in a city of the second class?

A. No, I think that is out.

Q. That yard is very crooked is it not, Mr. Dean, the yards there are very crooked and the track going out to the Rock Crusher?

A. Several curves there.

Q. There is several grades there is there not?

A. Yes.

Q. Up and down grade are they?

A. Yes.

Q. You push the cars going out there do you not?

A. I think they do; I am not certain how the work is performed just now.

Q. How many cars do you generally carry out there?

A. As many as required.

Q. Average how many?

A. I couldn't say exactly; some days a heavy business, some days it is light.

Q. Now isn't it a fact, Mr. Dean, there is 25 or 30 cars, sometimes maybe more, pushed out to that Rock Crusher every trip?

A. I wouldn't say every trip.

Q. I mean at a trip there are 25 or 30 cars?

A. They can push 25 out there if necessary.

185 Q. Well they do do they not?

A. They do when it is necessary.

Q. And they push more when it is necessary do they not?

A. Yes.

Q. They push them out and not pull them?

A. I am uncertain as to that, whether they always do or don't.

Q. That track runs up and down a pike does it not or crosses a pike?

A. Well it crosses a road.

Q. And it crosses a road that is used quite a bit by pedestrians and automobiles?

A. The same road that crosses the Central Division runs out.

Q. That road is used quite a bit isn't it?

A. I don't know.

Q. That is a Pike and one of the best roads at Little Rock there?

A. I think so, one of them.

Q. Now going around such curves as you have out to the Rock Crusher at Little Rock, pushing 25 or 30 cars, whatever the cars may be, down a steep grade—how would signals be transmitted around a curve?

A. The same as they would at any other place.

Q. Well there are places around there where a man cannot see more than five or six or seven cars from where the next man is standing?

A. Yes, and I have worked on places where if you had a dozen men on the train you couldn't see for the signals.

186 Q. Well could a dozen men see all of the signals on this road out to the Rock Crusher?

A. I think three men could.

Q. You don't know whether three men could or not?

A. I am told they could.

Q. The road is very crooked there you say?

A. Yes.

Q. A man ought to be on the end of that cut of cars to warn anybody if they run into them or are about to run into them?

A. That is our rule.

Q. It is necessary if they see anyone about to be hit that they transmit a signal to the engineer is it not?

A. That is our rule.

Q. And they have to have a sufficient number of men on the train to get it back to them?

A. We furnish a sufficient number of men to do that.

Q. I believe you stated, Mr. Dean, there is only two crossings in Argenta?

A. Yes, one at the Viaduct and one just north.

Q. Now at that Viaduct crossing, that crosses right over the Main Street of Argenta does it not?

A. Yes.

Q. How many tracks do you have passing over there?

A. Two tracks operated on there.

Q. Well there is two main lines there are they not, Mr. Dean?

A. Yes, two main lines, and the main lead—three.

187 Q. The Fort Smith short Y passes there too does it not?

A. Well that is in a different location.

Q. That is up about a half a block further north is it not?

A. Yes.

Q. What you call a hold engine switches in that yard does it not?

A. Yes.

Q. That is its location right in there?

A. Yes, sir.

Q. There is a public school within a block or two there is it not, Mr. Dean?

A. Yes, sir.

Q. School children pass over those tracks at all hours during the day do they not?

A. They should not; we spent many thousand dollars on the viaduct there to keep them from doing it.

Q. School children do that do they not?

A. I expect school children do a great many things they shouldn't do.

Q. You have seen them do it have you not?

A. I have before the viaduct was constructed.

Q. Have you seen any of them pass over there since the viaduct was constructed?

A. No sir.

Q. How many times have you been around there since the viaduct was constructed when the school children were leaving?

A. I couldn't say how many times I have been around there since the viaduct was constructed.

188 Q. That engine in there handles long cuts of trains and cars in there doesn't it, Mr. Dean?

A. Yes, the hold engine.

Q. And you have times in the yard there where you have the engine in the middle and long cuts of cars on both sides do you not?

A. That is an unusual occurrence.

Q. It is a fact that they do it is it not?

A. Yes, it is a fact when you have a wreck or something happens makes it necessary to make a move of that kind.

Q. You say when they go over to East Little Rock you carry anywhere from 15 to 50 or 60 cars; is that it?

A. Just about the same as you would on the road train.

Q. Do you push those cars at times?

A. No, I think not; sometimes they do I think.

Q. They have to operate on curves there do they not?

A. Yes.

Q. Now, Mr. Dean, with 50 or 60 cars—they are approximately 40 feet in length are they not?

A. Average that.

Q. With that number of cars covering that distance with the noises you have in the yards there and the curves, do you think you could properly transmit those signals?

A. I know of no reason why you cannot, three men on the crew.

Q. Now how about the Valley bridge there, Mr. Dean; there is a very sharp curve there is there not?

A. Yes.

189 Q. And you have to shove those 60 cars over that Valley bridge?

A. Shoving 60 cars with an engine is very unusual.

Q. They do it do they not?

A. I don't think that they do.

Q. When you operate around a very sharp curve it is worse than a straight track isn't it?

A. Considered so, yes.

Q. You have had several accidents there at Little Rock have you not, Mr. Dean, by one car being put too close to the lead so as not to allow a clearance for a man riding on the side of a box car next to the side track?

A. I know of no more in Little Rock than other places of like size.

Q. You often have that don't you, just as an example?

A. No, those things don't occur so often.

Q. You do have those conditions?

A. Yes, we run over men and cut them up and kill them sometimes; sometimes a man does things he ought not to.

Q. Those cars that are placed on the lead there, they are placed there by the men while they are switching near and they are placed too close to another track not allowing a clearance.

A. They have instructions how to place those cars; if they fail to do that they are not complying with the orders.

Q. They handle long cuts of them while they are doing the switching?

A. No matter how many cars you are handling the instructions are safety first.

190 Q. That is not as practical in a short handed crew as it seems sometimes, Mr. Dean?

A. No matter how practical it is; safety first, last and always.

Q. Now you have a crossing at 4th street have you not where you cross the Rock Island railroad?

A. Yes, sir.

Q. How many tracks pass that crossing?

A. I would have to get the blue prints.

Q. There is several tracks pass there?

A. Yes, sir.

Q. You have a crossing at 9th street have you not?

A. In East Little Rock?

Q. Argenta?

A. I cannot locate it by that name now.

Q. Well you have one at 8th street in Argenta have you not?

A. I would have to get the print to locate it by that name.

Q. Then you have one at the Main street or Fort Smith crossing have you not?

A. Yes.

Q. You have one at Poplar street have you not?

A. Yes.

Q. You have one on the main line at Main street?

A. I think so.

Q. And then the Fort Smith branch runs out from Argenta, that goes across several crossings does it not?

A. I think there is about one or two in the city limits.

Q. Your yards at Little Rock are located at the same place as the Iron Mountain shops are, part of them, are they not?

191 A. They are located over there in that vicinity in Argenta.

Q. And men pass up and down these tracks and across them going to work?

A. Sometimes they do.

Q. How many men have you employed in those shops?

A. It varies.

Q. Approximately how many men are employed?

A. I would have to get you the report from the Superintendent of the shops.

Q. You can state whether it is two or three hundred or something like that?

A. Yes, there is more than three hundred.

Q. At any rate there is quite a number of men over there?

A. Yes, sir.

Q. For the same reason that you put an extra man, that you thought it was necessary to put an extra man on the engines there in Little Rock, if unusual conditions arise in such a place as Hot Springs by reason of such a thing as a Fair, would that occasion arise?

A. That is left to the judgment of the General Superintendent.

Q. In your judgment?

A. Depends on how heavy the work is or how fast I wanted it performed.

Q. If it is a heavy rush you would think so, Mr. Dean?

A. It all depends on the amount of work.

Q. It depends on the amount of work how many men you need?

A. No, the conditions under which they were doing the work.

192 Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Dean, they asked Mr. Wise how he would handle the kicking of cars across a public crossing. In doing switching I will

ask you whether it is against the rules to kick cars against a public crossing?

A. It is not permitted.

Q. He asked you if Dickinson Brick yard and Buckeye Cotton Oil Company or the Rock Crusher was situated within the city limits of any city of the first or second class; you answered no. But could you get to those without the switch engine passing out of a city of the first or second class to get to them?

A. Not without a considerable extra expense.

Q. The way you do your work now?

A. The way we do our work now, no.

Q. So then it would be necessary under the law to have——

Mr. Jones: I object.

The Court: Objection sustained; that would be a conclusion.

Q. Well is the Main Street crossing in Argenta under the viaduct protected in any way?

A. By a flagman.

Q. Is there any other flagman over there?

A. I think there are three flagmen over there.

Q. Do you remember what other two crossings the flagmen are kept?

A. At the Poplar Street and the street just north of the office at Argenta. I remember the viaduct, there is a flagman just north of that. There must be four or five in there as I remember.

193 Q. In Argenta?

A. Yes, sir.

Q. Take East Little Rock where he speaks of that you have to cross over certain crossings; are any of those protected?

A. Yes, sir.

Q. How many of them?

A. The one just east of the Rock Island and 9th Street.

Q. Protected how?

A. By a flagman.

Q. He asked you if you were pushing cars from Argenta over to East Little Rock if signals could be passed. I will ask you whether it is a rule to push cars or pull them?

A. There is no set rule about that in a yard. As a rule the cars are pulled; sometimes conditions are such that it is better in handling the work to shove the cars ahead of the engine.

Q. In going from Argenta out to Dickinson's plant, either one of them, out to the brick yard or to the Rock Crusher, do you do any switching when you start out there?

A. I don't know of any switching.

Q. Suppose you had a foreman and two helpers and they wanted to pass a signal; what part of the train would they be on to pass them?

A. One man should be on the leading car and the other two men stationed where they could see each other.

Q. What part of the car would they be on?

A. On top of the car; they have to see signals from the man on the leading car.

194 Q. Then if a string of cars was being pushed to one of these places the man to get the signals would be on top of the car?

A. The man on the leading car should keep a sharp lookout and give signals to the other members of that crew. They should be distributed along, possibly one in the middle of the train and one near the engine where the engineer could see him.

Q. Suppose a man on the end of the car going out to Dickinson plant and the other two men were distributed on top of the car, could they pass the signals back al-right?

A. I think we have all of the men required when we have a foreman and two men handling any cut of cars we desire to handle from the Argenta yard to the Dickinson stone plant or to the brick yard.

Q. Would a foreman and two men be plenty?

A. A foreman and two men would be.

Q. Going out to the other industries, if there is men on top of the car is there anything to obstruct the view back to the engine, although the track is curved going to the Rock Crusher?

A. No.

Q. Going down to the Buckeye and those industries down there, are there any hills or anything to obstruct the view?

A. Nothing of that kind, no sir.

Recross-examination.

By Mr. Jones:

Q. When you pass around a sharp curve houses between will obstruct the view will it not?

A. Yes, you cannot see through some solid things.

195 Q. Now these flagmen you are talking about at the public crossings; do you have flagmen on both sides of the crossings.

A. Not at all crossings, no sir. We do at some crossings.

Q. What crossings there at Argenta have you a flagman on both sides of the crossing?

A. We have none in Argenta.

Q. You have no crossings there where there is a flagman on both sides?

A. No sir.

Q. Now, Mr. Dean, isn't it a fact when one of these trains is operating and a long string of cars come by that the flagman's view is obstructed and that he cannot see the rest of the tracks?

A. Nobody will try to go across that track while the train is moving past him.

Q. That road stretches up there for a block along the Main Street in Little Rock, doesn't it?

A. The flagman is there for the purpose of preventing people from undertaking to cross at a dangerous time.

Q. He is not there at night at all is he?

A. He is part of the time, but I don't know just what hours.

Witness excused.

Testimony of J. F. Murphy.

J. F. MURPHY, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. J. F. Murphy.

Q. Where do you live, Mr. Murphy?

A. St. Louis.

Q. What is your business?

A. General Superintendent of the Eastern Division of the Missouri Pacific.

Q. What does your jurisdiction cover?

A. I have all of the lines in Missouri, one Division in Illinois, parts of two in Arkansas, and one in Kansas.

Q. Give us a description of your Division in Arkansas?

A. I have got the White River Division. That extends from a short distance south of Aurora, Missouri, to Newport; the Missouri Division from a station called Moore to Hoxie, including Hoxie.

Q. You have all of the Iron Mountain railroad from Hoxie to St. Louis; is that correct?

A. Yes, sir.

Q. How many points in Arkansas do you keep switch engines under the law of 1913 requiring the foreman and three helpers?

A. In my territory we have none.

Q. Do you do switching in Hoxie?

A. We do.

Q. Why don't you keep an extra man at Hoxie?

197 A. A city of the third class or fourth; I am not sure which. It is not a second class city.

Q. You do switching at Hoxie?

A. Yes.

Q. What extent of switching do you do at Hoxie?

A. Well we handle at Hoxie approximately six hundred cars a day.

Q. Are you familiar with Newport?

A. Yes, sir.

Q. Are you familiar with Hope?

A. I am.

Q. Paragould?

A. I am.

Q. Helena?

A. I am.

Q. Pine Bluff?

A. Yes.

Q. El Dorado?

A. Yes.

Q. Van Buren?

A. Yes.

Q. Fort Smith?

A. Yes.

Q. Wynne?

A. Yes.

Q. McGehee?

A. Yes.

Q. Hot Springs?

A. Yes.

198 Q. I will ask you how does the amount of switching that is done at Hoxie compare to the amount done in the towns that I have just mentioned.

A. The towns or cities of Little Rock and McGehee are the only ones I believe that handle more cars than we do at Hoxie of the towns you have mentioned.

Q. Now at Hoxie is your switching done across—Just describe your yard there and the conditions in it and whether there are crossings, etc.

A. The train yard proper there is no crossings to it. The main line and leads to industries and connections with the Frisco, we cross three crossings I think between the entrance to the yards and the connection with the Frisco.

Q. You cross them with the switching crew in doing the switching?

A. We do.

Q. I will ask you how many men you use in doing your switching there in the switching crews?

A. A foreman and two helpers.

Q. I will ask you whether that is all the assistance you need?

A. Absolutely.

Q. Could a third man be of any assistance to you in doing that work?

A. No.

Q. What experience have you had in the railroad business, Mr. Murphy?

199 A. Well I began as a boy in 1887. I filled every position in the yard service from messenger boy to General Yard Master and Train Master of Terminals. That included the position of switchman, switch foreman, Assistant Yard Master, night Yard Master, and General Yard Master, was then promoted to Train Master and in 1899 and 1901 to Superintendent of Terminals.

Q. At what point?

A. Kansas City, Missouri, and Springfield, Missouri.

Q. Where did you act as switchman?

A. In Kansas City and Peoria, Illinois.

Q. Where did you act as Yard Master?

A. Kansas City and Springfield, Missouri, for the Frisco.

Q. Did you ever have any experience as a railroad man in Arkansas except the Superintendency you have?

A. No, I have been Superintendent on practically all Divisions of the Iron Mountain.

Q. In Arkansas?

A. Yes.

Q. Were you ever Superintendent at Little Rock?

A. I was.

Q. How long?

A. Two years.

Q. When?

A. May, 1909, to June 19, 1911.

Q. What territory did you have charge of at that time when you were Superintendent at Little Rock?

A. What is called the Arkansas Division including the Little Rock Terminals.

Q. Just tell us what territory it covered?

200 A. Well it covered the main line from Hoxie to Texarkana; from Little Rock to McGehee; from Benton to Hot Springs, including the Hot Springs Western from Gurdon to El Dorado, and Gurdon to Womble.

Q. Were you ever Superintendent at Fort Smith—Van Buren?

A. At Van Buren, yes.

Q. What was under your jurisdiction there as Superintendent, and when was that?

A. From March 15, 1908, until the Fall of 1909—I couldn't tell you the date. I had charge of the railroad from Coffeyville, Kansas, to Little Rock, including the branches of the Central Division.

Q. What other points, if any, were you ever Superintendent in Arkansas?

A. In 1906 and 1907 I was Superintendent of the Memphis Division with headquarters at Wynne.

Q. What territory did you cover?

A. From Memphis to Bald Knob, and Helena to McGehee and Noble, and the Arkansas Midland.

Q. In occupying the various positions you have spoken of did that familiarize yourself with all of the towns you have mentioned a while ago?

A. During the period I was Superintendent of those various Divisions I was personally acquainted with those towns—and you see McGehee, that was on the Valley Division, I was Terminal Superintendent there while they were making a change.

Q. How many cities under your jurisdiction now where you do switching larger than McGehee in your territory?

201 Mr. Jones: We object to that. That is conditions in Illinois, Missouri, and they have taken up enough time with Arkansas.

The Court: Well if the conditions are the same as in Arkansas and in towns of the same size where conditions are similar, just for comparative purposes.

To which ruling of the Court the State at the time excepted and asked that her exceptions be noted of record, which was accordingly done.

A. St. Louis, Jefferson City, Sedalia, Nevada, Carthage, Webb

City, Joplin, Dupo, Illinois, and Bush, Charleston, Missouri, Poplar Bluff. That is all I can remember right now.

Q. The switching *on* these towns that you have mentioned please describe and tell us whether or not the switching is similar to the kind of switching done in the towns of Arkansas?

A. All lines in the Southwest today are operating under what is called the Standard rules; the rules — identical, though the customs and practices may be different at some places, but very little. The method of handling the switching business in all of the towns that I have mentioned is the same as it is in Little Rock, Hope, Hot Springs, and all the cities that you mentioned, under the same rules and handled in the same way that the switching is handled on the Frisco at Springfield, Missouri, and many other points on their lines, the Kansas City Southern and all lines in the West and South. There is very few lines that operate under anything

202 but the Standard rules, which necessarily carries with it customs and practices which are identical with those employed all over the State of Arkansas.

Q. Do Railroad Companies have the contract for doing the switching?

A. No, they have a contract with the B. of R. T.

Q. Does that contract extend over all of the territory you have charge of?

A. Yes indeed, and we have B. of R. T.—not less than 90 per cent of the men in all of the yards over which my jurisdiction extends is B. of R. T. men.

Q. What does that mean?

A. Brotherhood of Railroad Trainmen.

Q. Are they the same people that do the switching in Arkansas?

A. They are.

Q. I will ask you as to grades and curves and crossings in the towns that you have mentioned in Missouri, Kansas, Illinois and other places under your jurisdiction—how do they compare with the grades and the crossings and the curves of the towns in Arkansas?

A. The only difference is, say at St. Louis for instance, there is more business done over the crossings than there are at Little Rock or any of the towns mentioned here. That is the only difference, the methods employed are the same.

Q. Take the other towns you mentioned, I have forgotten what they were, but as to switching across crossings and grades,

203 how does that compare with the other towns in Arkansas?

A. There isn't a bit of difference, absolutely none. The men in the Argenta yards can go to any yard on the Missouri Pacific system any place, and unless there is some local condition there such as overhead structures or places that will not clear; that is the only difference there is in the operation, and that is covered by various instructions, bulletins, notices, etc.

Q. I am speaking now particularly of crossings, grades—you say they are similar?

A. Practically so; of course they are not all alike, but they are practically the same.

Q. How many men do you use in Missouri with your switching crew?

A. The only yard that we employ to exceed two helpers and one foreman is at Dupo, Bush and St. Louis.

Q. Why do you employ those—now I mean on similar yards like these in Arkansas?

A. Well the only similar yards we have got that we employ more than two helpers is St. Louis, what we call the 23rd Street yards.

Q. Why do you employ the third man there?

A. The grade of the yard from the lead will permit cars rolling after they are cut off. And when the engines come in they use a couple of additional men to ride these cars because they cannot kick them enough to roll in and clear; the same as you do in 90 or 80 per cent of the yards all over the country.

204 Q. Do you have any conditions of that kind in any of the yards in Arkansas?

A. No, we have got none.

Q. How many crossings in that yard?

A. St. Louis. There is none over this particular yard.

Q. Do you employ anywhere in Missouri the third helper where you switch across crossings?

A. In St. Louis, the St. Louis terminals, is the only place we have anything of that kind. We have one or two, possibly three, engines at work on the outside of the City working industrials that are obliged to do their work from the main line. We have double track on both lines out of St. Louis, but there are some industries located out there where there is not sufficient facilities in the plant proper to do the switching, and they have got to do it on the main line, and with those switch engines we send flagmen, men who have been in the service for a long time and every one able to do a job of switching.

Q. Does he go with the train?

A. Then send him out and stop at an industry to do some switching and he goes out to protect that end of the train.

Q. Take in Kansas, the towns you mentioned in Kansas you have under your charge, how many men do you employ there on the switching crew?

A. Two helpers and one foreman. The same in Illinois, except one crew in Illinois at a place called Bush we have a gravity yard.

Q. Similar circumstances?

205 A. Similar circumstances, very near it.

Q. From your experience as a railroad man do you need an additional man in any of these places there for efficiency or for safety?

A. We do not; if we did for efficiency the man would undoubtedly be put on because those engines cost anywhere from twelve to twenty-four thousand dollars each, and the aim of the management of any railroad especially at this day is to get every minute's work out of an engine, in other words get its maximum efficiency, and if an additional man or two or ten men, if you please, would

get more work out of that engine why we would have the ten men on there.

Q. From your experience then would a third man be of any benefit to you or to the Railway Company in its work in any of these towns mentioned except as indicated in your testimony as given?

A. No sir.

Q. Now I will ask you taking the towns I have mentioned in the State of Arkansas—Hope, Little Rock, Newport, Texarkana, Paragould, Helena, Pine Bluff, El Dorado, Van Buren, Fort Smith, Wynne, McGehee, Hot Springs, Hoxie and Argenta; I will ask you would a third man do you any good in any of those towns?

A. When I was Superintendent at Little Rock there was either two or three crews working in the Argenta train yard that had the third helper, put on there primarily to pass signals, but those are the only crews in Little Rock yard that I would consider it necessary to put another man on, that is to facilitate the work or
206 make it safer.

Q. If it wasn't necessary to put him on to facilitate the work or put him on to make it safer, would it be necessary to put him on for any other effect?

A. To make another job.

Q. In switching in these various towns we spoke about in Arkansas, leaving out those crews you spoke of in Arkansas, that is Little Rock, would there be anything for a third man to do?

A. No.

Q. Now, Mr. Murphy, in switching cars—suppose the train comes in and you want to break it up and place the cars or kick the cars on to the lead, describe to the court how it is done?

A. Well there is various ways of doing that; the customs are not the same all over. Ordinarily though in the handling of the trains the bills went to the yard office and the yard clerk made out the cards, went out and tacked the cards on, the car inspectors inspect the train in the meantime, and when the yard clerk got through they were ready for the switch foreman to separate them, classify them, in other words to switch them to the various tracks, classify them. That is all there is to it.

Q. Go ahead and describe how this crew would take hold of that train and break it up?

A. Well as a rule if they are in a hurry, they had an important train, say any important loads in it, they would cut it in the middle and pull it from both ends and switch it, two cars in this track
207 and three on another and one on another. They have a train probably where industries for a certain district are collected, cars for that particular territory, say for instance Plunkett-Jarrell, all East Little Rock stuff, except perishable, would be dropped on one track. The next morning an engine would couple on to that entire string of cars that was on that track, pull it to East Little Rock, and there it would be separated and placed at the various industries around East Little Rock.

Q. Suppose you were coming across or pushing in off the lead

into the various tracks, tell us how and what position each man would take, what the work of the foreman would be and the two helpers, if you had it, and the third one, if you had it?

A. That as I said before depends a good deal on the physical condition of the yard in the first place, and the grade line.

Q. Take any town in Arkansas?

A. The customs on that are different at various places due to the physical condition, the crossings, the connections, and the street crossings.

Q. Take Argenta?

A. As I said before there was two or three crews or possibly four, I am not sure, over there that had the third helper at Argenta. There was one man, the man following the engine, who we call the pin-holder. They pull that out and that separates two
208 cars. The foreman as a rule when the cars are not carted he carries a list that he has before him showing the destination of these cars, and he will tell those men to cut off one car or three cars or five cars, whatever he wants to classify to certain tracks. Now in many yards those cars will roll off without any body riding on them. Some places they have got to ride them to avoid damage to the cars and other cars standing on the track. Often it is necessary for the man, what they call the field man, to ride those cars, but that is the exception, because all yards are constructed with the view of avoiding that if possible.

Q. What would a third man do now?

A. A third man on these particular engines that I refer to?

Q. Leaving out those particular engines?

A. He would probably be used as a Secretary to the foreman, that is about the best place you could use him because the third man will not fit in except under special conditions, no more than the fifth wheel in a wagon. He won't fit except under special conditions at special points.

Q. And those were the trains you talked about that you had the third man on?

A. Yes; no more than your fireman and your engineer. You put the second fireman in the engine, now what would he do; that is apparent to everybody. Now the same condition applies with the third helper on the average switching crew in Arkansas.

Q. How could he protect the crossing if he was switching
209 across a crossing, the third man, could he be of any help in protecting crossings?

A. The help he would be—in the first place I never knew of a man that deliberately kick- cars across a crossing at grade used by vehicles and pedestrians, because it is one of the things that few men in the railroad business will tolerate.

Q. If you were taking a string of cars from Argenta to Little Rock could a third man protect the crossings?

A. No, unless the engine pulled up to the crossing and stopped and let him go over ahead.

Q. Or if you are pushing the train have to do the same thing?

A. The same thing.

Q. The attorney for the State asked one of the witnesses if he had an engine with a string of cars in front of it and a string of cars behind it, and if he was kicking those cars each way, how he would do that with one man and two helpers?

A. In the first place a man that would do that wouldn't remain in the railroad service very long as a foreman. What he would do he would cut off the cars on either end of the engine and leave them stand there and complete his work with the other end. That is an unsafe practice and I will say I never saw it done in all of my experience. If they do know of anything of that kind it is a very unusual condition, because there is no officer, Yard Master,

Train Master, or Superintendent or anybody else that will tolerate that kind of a movement.

210 Q. Well suppose that he did do it, could he do it in any way with one crew, kick both ways?

A. No, he would have a hard time.

Q. Have to have a crew at both ends wouldn't he?

A. Sure.

Q. Where is the heavy switching generally done in the yards?

A. On what we call the lead where the tracks break off from the ladder track.

Q. In what kind of yards, industrial track or the main yard?

A. In the main yard; that is where 85 per cent of the main work is done.

Q. What kind of switching is that, Mr. Murphy?

A. That is classifying all the industry stuff for the tracks. They are taken to the yard and classified, placed on certain tracks that go to certain Districts. Now that is done in two ways; they collect cars off any tracks off the lead, they are classified in that way. They will gather up a lot of loads and empties from industries up to maybe a hundred and they will pull those into the train yard and they will separate those in the same way; in other words get all of the cars together that belong in a certain district. That is what we call classifying. I will say that 85 per cent of the work is done in the train yards.

211 Q. Where are the trains made up, freight trains?

A. In the train yard.

Q. Now those train yards, how are they as to crossings?

A. Well there is no crossing practically in any train yard where there is any amount of work done, because it would materially affect the efficiency of the yard and you couldn't get the maximum results in efficiency if you had any crossings in any train yards, that is a busy train yard.

Q. If there is a crossing, say like Main Street in Argenta is that across the main tracks across the yards there?

A. Main Street in Argenta, yes, it is; that is the street under the viaduct.

Q. Yes.

A. That is across the main line and also across the lead.

Q. Those streets are they protected in any way?

A. Yes, there is a flagman there or was when I was there.

Q. Could the third man be of any assistance in protecting that crossing?

A. I don't know; no, there is a flagman there.

Cross-examination.

By Mr. Jones:

Q. How long did you act as Superintendent in Little Rock, Mr. Murphy?

A. About two years.

Q. As Superintendent in Little Rock what connection did you have with the switchmen in their switching?

A. Well I was Superintendent, and the Superintendent of
212 Terminals reported to me, and the General Yard Master to him, but unfortunately for me my early associations entered into it largely and I was out among the switchmen more than most Superintendents, because I used to feel that I was at home, and as a result I was pretty well posted on the operations out there.

Q. In all of your experience in the railroad, did you ever see an engine in the middle of a cut of cars and switching at one end of it?

A. What do you mean, switching from one end of the engine?

Q. The engine will be in the center and a string of cars on both ends of the engine, and at one end of the string of cars they are switching around in the yard?

A. No, if I had I would have immediately stopped the man if I had jurisdiction.

Q. And all of the time you were over in the Argenta yards you have never noticed that?

A. I did not.

Q. Now that flagman at the Main Street crossing there in Little Rock?

A. Argenta you mean?

Q. Argenta—he only works during the day time doesn't he, Mr. Murphy?

A. I cannot say; I don't know.

Q. There is only one flagman on one side of the street and the other side is unprotected?

A. I cannot say; I don't know what the conditions are now.

Q. At the time you were there?

213 A. There was one man there.

Q. Strings of cars are constantly operating up and down those lines are they not?

A. Not constantly, no.

Q. The hold engine works right in those yards doesn't it?

A. Most of the time, yes.

Q. They pull strings of cars there do they not across that crossing?

A. They pull strings of cars in every yard in the country.

Q. They pull them across the crossing there too don't they?

A. Sure.

Q. The tracks there stretch out for almost a block don't they, Mr. Murphy?

A. A mile.

Q. Well right there at that point I mean, across the street there, Main Street, for a block up and down that street. The track passes across the street from about 8th Street to 9th Street on Main?

A. Yes.

Q. It takes it almost a block?

A. I don't know that I get you; your question is hardly clear to me.

Q. Well the first track from the Fort Smith short Y is about 9th Street is it not on Main?

A. Well I won't say that positive now; I think so though.

Q. Well do you know how far, taking the first track on Main street with reference to 9th Street, how far down Main Street towards 8th Street do the other tracks run parallel?

214 A. I wouldn't want to say now; it has been three years since I have been there.

Q. Do you remember approximately about how far they run?

A. The lead out of Fort Smith yard south to the crossing I presume extends a block parallel to the main line north.

Q. And that is across the Main Street at Argenta?

A. Yes.

Q. School children are constantly going across those yards aren't they, Mr. Murphy?

A. I don't know about that.

Q. You haven't any cities of the first and second class in your division in Arkansas have you?

A. No.

Q. Isn't it a fact, Mr. Murphy, that switching at Hoxie you were speaking about, don't they bring those trains in and just turn them around and send them on out; they are not broken up like they are if they were switched?

A. There is switching done on every train that pulls in and out of Hoxie, some more and some less.

Q. They are through trains, just broken up and carried on?

A. There is more or less switching on every train that comes into Hoxie yard. I have never known a train to go through Hoxie without being switched.

Q. Mr. Murphy, you said there were about six hundred cars switched every day at Hoxie?

A. Yes.

215 Q. Isn't it a fact that most of those six hundred cars, all of the switching done on those, they come through, they are through trains and the caboose is changed on them?

A. The caboose is changed on every train that comes through there.

Q. Now you employ you stated three men in certain yards in St. Louis on account of the grade?

A. Yes.

Q. What per cent grades on those St. Louis yards at that point?

A. They run from one per cent to six and eight.

Q. That is on the main line?

A. In the yard.

Q. Are you acquainted with the Iron Mountain yard, the Valley Division at Little Rock?

A. Yes.

Q. Isn't it a fact if you turn a freight car loose at the Valley depot there in Little Rock and after you pass Rock Street it will roll to the main depot in Little Rock?

A. Yes, cars will roll from that point to where you say.

Q. And you pass several crossings there?

A. Yes.

Q. And pass where teams drive through to the wharf?

A. There is, yes.

Q. Do you know how many teams pass down that street and across that track over it?

A. No.

216 Q. Do you think it unnecessary, Mr. Murphy, when a car is thrown across a public crossing or kicked across for a man to ride it; do you think that is necessary?

A. I believe I said before if a man would kick a car across a crossing without somebody on it he should be discharged or kick a car across a crossing with somebody on it.

Q. Isn't that done every day, Mr. Murphy?

A. No.

Q. Isn't it done in the Little Rock yards?

A. I don't think so; I am not sure.

Q. Isn't it done in the Argenta yards?

A. I don't think so.

Q. Isn't that a common practice with switchmen?

A. No, it is not absolutely.

Q. Are you speaking from your knowledge of St. Louis at the present time?

A. I am speaking of my knowledge in the various yards, which number into the twenties or thirties. I am speaking of the knowledge obtained from a school of experience of pretty near twenty years, and I say to you that it is not proper to kick cars across a public highway.

Q. You have never seen that done?

A. I have seen it done and stopped it instantly.

Q. You have five or six crews I believe that you named in St. Louis, or the number it was, that you have three men on?

A. Yes.

217 Q. That is on account of the grade and the business there is it not?

A. That is for the reason as I said before. We have double tracks on both lines out of St. Louis. On the outskirts of the city there is a great many industries, the crews that do that work out there they are obliged to work on the main line, that is handle the stuff on the main line; to provide protection, that is out in some instances ten miles from the city, we provide a flagman to protect the train in a direction that they are putting their transfer; for instance if they are putting it on the north bound track they would have a flagman south a sufficient distance to protect their movements.

Q. You said I believe that you put an extra man on two or three crews in Argenta to transmit signals?

A. No I did not. I found them there; I think there were two or three or probably four.

Q. Did you let them remain there, Mr. Murphy?

A. Yes, I didn't disturb them.

Q. The yards there in some places are very crooked are they not?

A. Well all yards are crooked to a certain extent. The lead in Argenta yard is practically the same as it is in nearly all of the yards of that size.

Q. Now Mr. Kinsworthy asked you how a third man would protect a crossing if there was a freight train, a string of cars, between the flagman on the crossing and the track where the switch engine was operating with a string of cars; couldn't a third man protect a crossing at that point?

218 A. You will have to give me something that is clearer than the way you outline that for me to give you an intelligent answer.

Q. Suppose there is a track on 9th street, there is a flagman to guard that crossing, there is a train coming up on the first track towards 9th street, those tracks stretch out parallel for a block toward 8th street, this train here, this cut of cars, is between the flagman and the balance of the tracks, going towards 8th street, a block of tracks there; don't you think the extra man on the switch crew could protect the crossing in that instance?

A. I don't understand why it would be necessary for anybody if there was a train already on the crossing as I understand you moving over the crossing; am I correct?

Q. Yes, sir.

A. I don't think there would be anybody attempt to pass that crossing while there was one train moving over it.

Q. If the tracks were stretched out for a block like they are in Argenta—you have seen them have you not, wagons drive right over some of the tracks?

A. No, I have not.

Q. Haven't you noticed that?

A. No, that is not the practice there.

Q. When you are going over to East Little Rock those cars in a string are often pushed are they not and not pulled?

219 A. The statement was made here by somebody that those long cuts of 50 and 60 cars were shoved around over the road to East Little Rock. The man that would make a movement of that kind under the existing conditions there, taking into consideration the physical condition of the property, is not a safe man on anybody's railroad. The proper way under the rules would be for that man to have pulled his transfer over to East Little Rock and back to Argenta. That is the way that movement was made when I had any connection with this part of the railroad, because a man would be insane that would shove 50 or 60 cars ahead of him and over the Little Rock bridge and past the Valley Station.

Q. Do you know whether they do that at Little Rock?

A. They didn't do it at one time.

Q. Do you know whether they do it now?

A. I do not.

Q. Suppose they did do it how many men would protect that train?

A. I wouldn't want to say because I never heard of such a movement of that kind in my life.

Q. Could a foreman and three men properly protect that train at that point?

A. No, I don't think he could, and I think that is the reason nobody would make a move of that kind because you couldn't put enough men on that point to properly protect it.

Q. If that is done it would require more than a foreman and two helpers to properly protect it?

A. Yes. I am talking now of 50 or 70 cars, to shove them from Argenta to East Little Rock.

220 Redirect examination.

By Mr. Kinsworthy:

Q. If you are pushing 50 or 60 or 70 cars in front of an engine from Argenta to Little Rock, could you put enough men on it to properly protect it?

A. No; and one engine wouldn't push that many cars I don't believe, that is if there was any loads in them, from Argenta to East Little Rock; around the curve from the east end of the bridge is 26 degrees I believe.

Q. Wouldn't a foreman and two helpers protect it as well as three helpers?

A. Yes, and five.

Recross-examination.

By Mr. Jones:

— Why, Mr. Murphy, around that curve couldn't you protect it just as well as on the piece of straight track?

A. Give me that again?

Q. For what reason couldn't a train with 50 cars be protected just as well on a piece of curved track as it would on a straight track?

A. Give me a piece of paper and I can show you. (Witness takes a piece of paper). This here is the bridge (indicating), this is a 26 degree curve here (indicating) and you couldn't possibly put four men on that 60 cars you are talking about and have a clear view of all the men on that train at any time and to pass signals.

Q. Suppose you had 30 cars with the engine there around that curve pushing it?

221 A. It is an unusual arrangement and a dangerous one, and I don't believe there is any practical railroad man will make a movement of that kind.

Q. Well assume it?

A. I don't assume it because a man that would do it as I said before—

Q. If a man did push 30 cars across the bridge across that curve—

A. Your Honor, here is the plant (indicating on the paper); there would probably be 6 or 8 cars between this point and this (indicating). Now this is 26 degrees around there (indicating). Three men would protect 60 cars just as well as four because you cannot properly transmit the signals.

Q. Suppose thirty cars were in front of that engine?

A. You can suppose twenty cars as far as that goes.

Q. Suppose twenty cars in front of that engine, could three men and the foreman transmit the signals there?

A. Let me tell you they don't do that kind of work in the railroad business and men that do do it don't stay in the business long, because there isn't any occasion for it. It would be necessary occasionally to run around the engine, run around the cut of cars and get his engine on the other end of the train; but the Yard Master or the Train Master don't allow that kind of work. The railroads of this country in the last two years have spent hundreds of thousands of dollars effecting safety measures in operation aided manfully by the men. There isn't a Division of our Railroad but what has got a Safety committee, composed of the yard men and engine men, Superintendent, Train Master, and they all work together. The object of that Safety movement is to avoid just such conditions as you are trying to make me assume now.

Q. I am not asking you to testify, Mr. Murphy, that they do that, but I am asking you now if they are pushing 20 cars around at grade, three men and a foreman could transmit a signal better than two men and a foreman could they not?

A. My answer is just the same. I wouldn't countenance, and I know there isn't many operating men in the railroad business that handles their business in that way. I know the conditions of East Little Rock, and I am perfectly familiar with them, and I know there is no single man would make the movement you describe here—fifty or sixty cars or seventy cars ahead of an engine, moving them around over a bridge and a 26 degree grade and over a street crossing that is there. There isn't any practical men that do that kind of a job.

Witness excused.

The Court took a recess until Monday morning, April 6th, 1914.

3 The Court met pursuant to adjournment at 9 o'clock, A. M. April 6, 1914.

Whereupon, the following proceedings were had:

Mr. Jones: I have a motion, Your Honor, to strike out certain testimony of witnesses, which has heretofore been given in this case.

The Court: All right.

Mr. Jones: The State moves to strike out the testimony of the witness G. H. Schweer, as to the train operated in the yards of the City of Hot Springs on the 17th of June, 1913, being engaged in interstate commerce, all of said testimony embraced on pages 15, 16, and 17 of the transcript. All testimony of the same witness as to the manner of handling passenger trains, the coaches, and the manner in which the switching of passenger trains was conducted in the city of Hot Springs. All of the said testimony being embraced on pages 11, 12, 13, 15, 16 and 17 of the transcript. All testimony of the same witness as to the manner in which the switching of freight cars is conducted in the yards, and as to the number of men required to do this work. All of said testimony being embraced on pages 11, 12, 13, 14, 18, 21, 22 and 23 of the transcript.

The State moves to exclude from the record all the testimony of witness J. H. Wright, on pages 52, 53, and 54 of the transcript, as to the number of men employed with switching crews
224 operated in the cities by railroads less than one hundred miles in length, and as to the conditions existing relative to the manner in which the switching is done by said railroads. The testimony of said witness relates to the conditions existing on the Arkansas Central Railroad, which the evidence shows to be a railroad forty-six miles in length. The State specifically moves the court to exclude the testimony of the same witness as to how many men are needed to operate a switch engine, as the witness has not qualified as to railroads over one hundred miles in length. This testimony is all embraced on pages 52 and 53 of the transcript. Furthermore, this is not a question calling for the answer as to the conditions, but calls for a conclusion and the answer is a conclusion.

The State moves to exclude the testimony of witness T. A. Shea as to the amount of switching done at Warren by the Warren and Ouachita Valley Railway Company, and the comparison with the business done at that point by said railroad with the business done at the same point by the Iron Mountain Railroad, as the evidence shows that the Warren & Ouachita Valley Railway Company is only eighteen miles in length and is not included in the Act. Said testimony all being embraced on pages 46, 47 and 48 of the transcript. The State further moves to exclude the testimony of the same witness as to the following question and answer:

"Q. I will ask you in doing the work at Monroe and McGehee, is the work done as well at Monroe and with as much safety
225 as at McGehee where you use the extra man?

A. Just the same, there is no difference."

as the question calls for a conclusion and the answer is a conclusion. Said testimony all being embraced on page 46 of the transcript and on page 49 of the transcript, relative to the degree of safety in which the switching is now done at McGehee and the degree before the third helper was put on, as the question calls for a conclusion and the answer is a conclusion.

The State further moves the court to strike from the record the

testimony of witness S. H. Barnes, relating to the number of men employed on switch engines in Muskogee and Tulsa, Oklahoma, all embraced on pages 55 and 56 of the transcript, as there is no testimony to show that the general conditions under which switch engine crews operate in Muskogee and Tulsa and the various cities of the first and second class in Arkansas to be the same.

The Court: I will look over the motion and make a ruling later.

226 *Testimony of J. W. Dean, recalled.*

J. W. DEAN, being recalled by defendant, testified as follows:

By Mr. Kinsworthy:

Q. You are the General Superintendent of the Iron Mountain Railroad in the State of Arkansas?

A. Yes, sir.

Q. Is there such a thing in Arkansas as what is known as a hump yard or gravity yard?

A. There is not.

Q. To what expense is the St. Louis, Iron Mountain & Southern Railway Company put to on account of the extra switchmen, or helper, required by the law in controversy?

Mr. Jones: We object. The Supreme Court has held and Mr. Kinsworthy knows the expense has nothing in the world to do with this—the expense or anything else as to whether this law should apply.

Mr. Kinsworthy: The court has not held this. The Court has held that if it does add an additional expense, if it is necessary, why they are required to go ahead and put in the expense. But we have a right to show the expense and show that they are taking our property without due process of law. We have to show that we are put to an extra expense and that it is not necessary.

The Court: Let the objection be overruled, and save your exceptions. I don't think the mere fact that they are put to an extra expense would make a sufficient defense.

(Question read.)

227 A. It costs between forty and forty-eight thousand dollars a year.

Q. That is for the Iron Mountain?

A. For the Iron Mountain Railway Company.

Q. In your judgment what per cent of the cars that are switched in the yards are not switched over grade crossings, on the Iron Mountain?

Mr. Jones: We are going to object to that. There is nothing that gives them a right to make such a statement, or to put in such testimony. He couldn't know; a man switching in the yards every day couldn't know that.

The Court: Read the question. (Question read.)

Mr. Jones: There's nobody on earth that could know that unless they were right there in the yards.

By the Court:

Q. Are you in a position to answer that question of your own knowledge?

A. I think so, in a general way and from observation, yes, sir.

The Court: Answer the question. And save your exceptions.

Mr. Jones: We save our exceptions.

A. 85% of the cars are not switched over the crossings.

Cross-examination.

By Mr. Jones:

Q. Mr. Dean isn't it a fact that you base your last answer on the fact that you go through the yards sometimes, riding through there—through the different yards?

A. No sir.

Q. How much, what per cent. of your time do you spend in the Argenta yards?

228 A. I couldn't answer that exactly. I go through these yards frequently.

Q. It is a small percentage of all your work?

A. A small percentage, but I am acquainted with the switching done in that yard.

Q. How much of your time do you spend in the switching yards at Hot Springs?

A. Not very much but enough to know what they are doing.

Q. How much of your time do you spend in the switching yards of Pine Bluff, on the crossings?

A. About the same per cent.

Q. Anyhow a small per cent of your time, is it?

A. Yes, but enough to be informed and I am informed of the work that is being done and how it is being done.

Q. Could you tell what percentage of your time you spend there?

A. No, I could not.

Q. What are you basing your answers on—on the conversations you have with the foreman and switchmen?

A. From personal observation of the work and knowledge of how it is handled.

Q. Then a personal observation during the time you happened to be in the yards?

A. And a knowledge of how the work is handled.

Redirect examination.

By Mr. Kinsworthy:

Q. The gentleman asked you how you arrived at your knowledge; I will ask you if you have a knowledge of the yards generally?

229 A. I have got a knowledge of all the yards in Arkansas on our railroad.

Q. From your records do you have a knowledge of the class of cars that enter into the yards and where they would have to go?

A. Yes, sir.

Q. And the handling of the trains and how they are handled?

A. Yes, sir.

Q. And from these facts you make up your opinion?

A. Yes, and also observation of the work from time to time.

Q. Do you also know the number or the approximate number of cars that go through without being switched, out of the main yard?

A. There is a very large number, or large per cent, of the cars that go through without being switched except changing the caboose.

By Mr. Jones:

— Now who has the direct supervision over these cars, Mr. Dean, under you?

A. The Superintendent of the Division reports to the General Superintendent, and the trainmaster reports to the Superintendent.

Q. Who reports to the Train master?

A. The Yard Master.

Q. And any information that you get on that the Yard Master transmits to the Train Master, and the Train Master to the Superintendent and the Superintendent to you?

A. In many cases the Yard Master's original reports come to me through the Superintendent's office.

230 Q. Have you got a form that gives you the information that you state?—the number of cars that go over these various crossings?

A. No, sir.

Q. Isn't it a fact that trains come in to be switched and cars set out at different places and sometimes they are carried around to the different parts of the yard to get to their destination?

A. Yes, that is correct.

By Mr. Kinsworthy:

Q. Does your record show the cars coming in and going out of the terminal?

Mr. Jones: I object to that question.

Mr. Kinsworthy: Well, I'll withdraw the question.

Witness excused.

231 *Testimony of J. F. Murphy, recalled.*

J. F. MURPHY, being recalled for further cross-examination by the State, testified as follows:

Recross-examination.

By Mr. Jones:

Q. You are aware what it means to drop a car are you not, Mr. Murphy?

A. I believe so.

Q. Now what is the rule of the Railway Company regarding the dropping of cars at crossings in the yards?

A. Why it is against the rules except in cases of emergency?

Redirect examination.

By Mr. Kinsworthy:

Q. What do you mean by emergency, Mr. Murphy?

A. The emergency would mean that there was only one end of the track that he wanted to drop the car on and he would necessarily have to drop it in place of shoving it in.

Q. If he had to drop it, if the emergency should arise by which he had to drop a car in that manner, what would be his duty as to safety?

A. Rule 106 covers that and a great many other movements of that kind: "In case of uncertainty or doubt, take the safe course."

Q. It would be his duty to take a course that would be absolutely safe?

Recross-examination.

By Mr. Jones:

232 Q. Mr. Murphy, how many tracks are there in Little Rock where there is only one end to them that you have to drop cars?

A. Well in years gone by there was a great many tracks that only had one end, but they are being eliminated just as fast as the Company can get funds to do the work.

Q. There still remains tracks in Little Rock and Argenta where that condition still exists?

A. I presume so; I am not positive.

Witness excused.

233

Testimony of R. C. White.

R. C. WHITE, of lawful age, being duly sworn and examined as a witness on the part of defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. R. C. White.

Q. Where do you live Mr. White?

A. Little Rock.

Q. What is your business.

A. Engineer.

Q. What kind of an engineer?

A. Civil Engineer, on railroad work.

Q. What position do you hold?

A. Engineer of Maintenance of Way, Southern District.

Q. For what company?

A. Iron Mountain Railway Company.

Q. How long have you been a civil engineer for the Iron Mountain Railway Company in Arkansas?

A. Six years.

Q. As civil engineer for this railroad, has your work familiarized you with the various yards in which switching is done?

A. Practically all the yards on the Iron Mountain, yes, sir.

Q. Have you blue prints of these various yards?

A. Yes, sir.

Q. Let me see the blueprints of the yards of Argenta.

(Witness produces blueprints.)

234 Mr. Kinsworthy: These are the blueprints of the yards, and there is a very large number of them and I want to get them into the record.

Mr. Jones: There is no objection.

Mr. Kinsworthy: Let the record show that witness R. C. White presents blueprints showing the yards of the St. Louis, Iron Mountain & Southern Railway Company in Argenta and Little Rock—embracing both yards—and that the same are attached to his testimony and marked Exhibit- A, A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, and A-10.

The blueprints are hereto attached and marked "Exhibit A", "Exhibit A-1", "Exhibit A-2", "Exhibit A-3", "Exhibit A-4", "Exhibit A-5", "Exhibit A-6", "Exhibit A-7", "Exhibit A-8", "Exhibit A-9", "Exhibit A-10" to the testimony of R. S. White.

By Mr. Kinsworthy:

Q. Explain this blueprint; what is that?

A. This blueprint is an index to the eleven different prints for the entire yard.

By the Court:

Q. Is this the same blueprint as this one? (indicating)

A. This is the index to it. For instance, here is No. 1 print. No. 1 print shows this territory; No. 2 shows this territory; No. 3, this, and so on, until eleven of them.

Q. You have various blueprints representing these various sections of 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, have you?

235 A. And 11.

Mr. Kinsworthy: This, as I understand, Your Honor, is an index to the blueprints?

By Mr. Kinsworthy:

Q. Mr. White, you have a blue print in your hand, now will you please explain what that is?

A. This sheet in my hand is an index to a series of eleven prints showing the entire yards of Little Rock and Argenta.

Q. Which have just been introduced by you and marked Exhibits A, A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, and A-10?

A. That is correct.

Q. Well, now, will you introduce this as exhibit B to your testimony, this index?

A. Yes, sir.

The blue print above referred to and introduced in evidence is marked "Exhibit B to the testimony of R. C. White."

The Court: Now are you offering these other blue prints?

Mr. Kinsworthy: Yes, *sir*, I am going to take them up in order.

By Mr. Kinsworthy:

Q. Mr. White, have you a blue print of Hope?

A. Yes, *sir*.

Mr. Kinsworthy: These all have reference to the Iron Mountain yards on which we have a report.

The Court: All right.

Q. Of the Iron Mountain yards at Hope?

236 A. Yes, *sir*.

Q. What is the paper that you have in your hand now?

A. A blue print showing the Iron Mountain tracks at Hope, Arkansas.

Q. Over which switching is done?

A. Yes, *sir*.

Q. Will you introduce that as Exhibit C to your testimony?

— — —

Blue print last above referred to and introduced in evidence is marked "Exhibit C to the testimony of R. C. White."

Q. Have you the blue prints of the yards at Newport?

A. Yes, *sir*.

Q. Is that the blue print you have in your hand?

A. Yes, *sir*.

Q. Showing the tracks at Newport over which switching is done?

A. Yes, *sir*.

Q. Will you introduce that as Exhibit D to your testimony?

A. Yes, *sir*.

Blue print last above referred to and introduced in evidence is marked "Exhibit D" to the testimony of R. C. White."

Q. Have you a blue print of the yards of Texarkana?

A. Yes, *sir*.

Q. Is that the blue print you have in your hand?

A. Yes, *sir*.

Q. You have a blue print in your hand; what is that? did you say?

237 A. This is a blue print showing the yards and tracks of the Iron Mountain at Texarkana, Arkansas.

Q. Over which switching is done?

A. Yes, *sir*.

Q. I will ask you to introduce this as Exhibit E to your testimony.

A. I will.

Blue print last above referred to and introduced in evidence is marked "Exhibit E to the testimony of R. C. White."

Q. Have you a blue print of Paragould?

A. Yes, sir.

Q. Is that the blue print of the yards over which switching is done in the yards of the Iron Mountain Railway Company at Paragould?

A. Yes, sir.

Q. Will you attach that blue print as Exhibit F to your testimony?

A. Yes, sir.

Blue print last above referred to and introduced in evidence is marked "Exhibit F to the testimony of R. C. White."

Q. Have you the blue print of Pine Bluff?

A. Yes, sir.

Q. What is that you have in your hand now?

A. The blue print showing the Iron Mountain yards and tracks at Pine Bluff.

Q. Of the tracks over which the switching is done?

238 A. Yes, sir.

Q. Will you introduce that and attach it to your testimony as Exhibit G?

A. Yes, sir.

Blue print last above referred to and introduced in evidence is marked "Exhibit G to the testimony of R. C. White."

Q. Have you the blueprints of El Dorado?

A. Yes, sir.

Q. What is that you have in your hand?

A. A blueprint showing the Iron Mountain yards and tracks at El Dorado, Arkansas.

Q. Of the tracks over which switching is done?

A. Yes, sir.

Q. Will you introduce that as Exhibit H to your testimony?

A. Yes, sir.

The blue print last above referred to and introduced in evidence is marked "Exhibit H to the testimony of R. C. White."

Q. Have you the blue print of Van Buren?

A. Yes, sir.

Q. What is that you have in your hand?

A. It is a blue print showing the Iron Mountain tracks and yards at Van Buren, Arkansas.

Q. That shows all the tracks at Van Buren over which the Iron Mountain does switching in the yards?

A. Yes, sir.

Q. I will ask you to introduce that blue print and attach
239 it to your testimony as Exhibit I.

A. I will.

Blue print last above referred to and introduced in evidence is marked "Exhibit I to the testimony of R. C. White."

Q. Have you the blue prints of Fort Smith?

A. Yes sir. There are three prints.

Q. What is that you have in your hand?

A. It is a series of three blue prints showing the tracks and yards of the Iron Mountain at Fort Smith, Arkansas.

Q. Over which switching is done?

A. Yes, sir.

Q. I will ask you to introduce and attach those blue prints to your deposition as Exhibits J, 1-2 and 3.

A. I will.

The blue prints last above referred to and introduced in evidence are marked Exhibits J-1, J-2, and J-3, respectively, the testimony of R. C. White.

Q. Have you the blue prints showing the yards at Wynne, Arkansas?

A. Yes, sir.

Q. What is that you have in your hand now?

A. It is a blue print showing the yards and tracks of the Iron Mountain at Wynne, Arkansas.

Q. Of the yards and tracks over which switching is done in the town of Wynne?

A. Yes, sir.

Q. I will ask you to introduce and attach that blue print
240 to your deposition as Exhibit K.

A. I will.

Blue Print last above referred to and introduced in evidence is marked "Exhibit K to the testimony of R. C. White."

Q. Have you the blue prints showing the yards at McGehee, Arkansas?

A. Yes, sir.

Q. What is that blue print?

A. It is a blue print showing the yards and tracks at McGehee, Arkansas.

Q. I will ask you to introduce that as Exhibit L to your testimony.

A. I will.

Blue print last above referred to and introduced in evidence is marked "Exhibit L to the testimony of R. C. White."

Q. Have you a blue print of the yards at Hot Springs?

A. Yes, sir.

Q. What is that you have in your hand now?

A. It is a series of three blue prints showing the Iron Mountain yards and tracks at Hot Springs, Arkansas.

Q. Does that show all the tracks over which the Iron Mountain does switching in Hot Springs, Arkansas?

A. Yes, sir.

Q. I will ask you to introduce these blue prints and mark them Exhibit M-1, -2 and -3 to your testimony.

Blue prints last above referred to and introduced in evidence are marked 'Exhibits M-1, M-2, and M-3, respectively, to the testimony of R. C. White.

241 Q. Have you the blue print of Hoxie, Arkansas?

A. No, sir, I have not got Hoxie.

Q. Mr. White, do the various blue prints introduced by you showing the various yards mentioned, show the grade of the tracks?

A. No, sir; all of these yards are flat yards and no grades shown.

Q. Does it show the grade on the main line?

A. No, sir.

Q. What kind of yards are they?

A. What we term flat yards, just to distinguish them from a hump or gravity yard.

Q. Could you place on those blue prints the grade on the main line?

A. Yes, sir; I could.

Q. Have you any data by which you could do that?

A. Yes, sir; I have the profiles showing the grades over the main line.

Mr. Kinsworthy: I would like permission for the witness to put the grades on.

The Court: Yes, that can be done during recess.

By Mr. Kinsworthy:

Q. I will ask you to take these various blueprints that you have introduced, at some time during the recess of the court, and place on each one the grade on the main line through the yards.

A. Yes, sir.

Q. Taking the yards in Argenta, I will ask you if you know how many crossings there are across these yards?

A. There are fifty-four streets, or highways, that cross the track at grades; 16 subways and viaducts cross the tracks and right-of-ways.

Q. Are any of them protected in any way?

A. Nine of the grade crossings are protected crossings, by watchmen, and one by an electric bell.

Q. I will ask you if the blue prints show every crossing that crosses the yards?

A. Yes, sir.

Q. Does it show which one is a grade crossing and which one is a viaduct?

A. Yes, sir, we have indicated on the blue prints in the yellow water colors all streets that cross the tracks and right of way, and those that cross by a viaduct or subway are indicated by the words "subway," or "Viaduct."

Q. Taking the yards at Argenta, beginning south of Union Station, do you know how far it is to the first grade crossing going towards Texarkana?

A. I would have to *sacel* the map; I couldn't say off hand.

Q. Approximately how many blocks?

A. From Argenta?

Q. No, from this over here, from Union Station?

A. Going south from Union Station?

A. Yes.

A. About twelve blocks.

Q. Beginning at the Union Station and going what you would call north, towards Argenta, how far through the yards would you go before you would come to a grade crossing, unprotected?

A. From our Union Station, north, approximately a mile
243 and a half there is a grade crossing and also a viaduct.

Q. Whereabouts is that?

A. That is Main Street at Argenta.

Q. Is that protected, or otherwise?

A. The grade crossing is protected by a watchman.

Q. The first crossing north of that, going towards St. Louis, is that protected or not?

A. Yes, that is three blocks north of Main Street; it is a grade crossing and protected by a watchman. In fact there is only two grade crossings from the Union Depot, north, to the city limits, and they are protected by watchmen.

Q. Have you the number of grade crossings at McGehee in the yards.

A. Yes, sir.

Q. How many grade crossings, if you know, are there in McGehee.

A. Three grade crossings.

Q. Do you know where these crossings are located as to the main yard?

A. These three grade crossings at McGehee are located to the north of the main yard.

Q. Taking the main yard proper are there any crossings in it?

A. No, sir, and there is very little switching done over what crossings there are.

Q. Take Paragould: How many grade crossings across the yards at Paragould?

244 A. There is none across the train yards.

Q. What do you mean by the "train yards"?

A. The train yards as distinguished from the industrial tracks.

Q. You mean in the private switching yards where trains are made up and handled?

A. Yes, sir.

Q. How many crossing- do you have across the tracks at Paragould to reach the industries and otherwise?

A. Eight.

Q. At Newport; how many crossings at Newport?

A. Four.

Q. How many of those are in the main yards?

A. Well, Newport hasn't exactly a main yard; it is all more or less of a combination yard, and there are two crossings located at one end and two at the other. One of these crossings is a busy crossing and is protected by a watchman.

Q. Are any of the crossings at Newport protected in any way?

A. One crossing is protected by a flagman, or watchman, and one by electric bell.

Q. Take Hot Springs—The City of Hot Springs: How many crossings are there across the yards?

A. Eight.

Q. Are any of these protected in any way?

A. One protected by a watchman and four protected by electric bells.

Q. Take Texarkana: How many crossings across the yards at Texarkana?

245 A. There is none across the main yards.

Q. How many crossings over which switching is done?

A. There is one crossing over which some little switching is done; that is protected by a watchman.

Q. I note that you have three crossings at Texarkana?

A. Two are near the north end of the yards.

Q. You have them protected by a viaduct—two by a viaduct and one by a watchman; is that correct?

A. No, there are three grade crossings in the city limits, and, in addition, one viaduct. One of the grade crossings is located near the north end of the yard and protected by a watchman, and two grade crossings further north of the yards proper.

Q. Take the yards proper; how many grade crossings would be across the yards proper, where trains are made up?

A. One; that is not across the yards proper but just to the north of it, over which switching would be done.

Q. Over which switching would be done?

A. Yes, sir.

Q. Is the viaduct over that?

A. Yes, sir.

Q. I will ask you—if you know—where there is an underground crossing, a viaduct, or a protected crossing, whether or not a great volume of trains pass across and over these crossings?

Mr. Jones: I object to that.

The Court: The question is leading.

Mr. Jones: It is not only leading, but there is nothing to show that a civil engineer would know that.

246 The Court: the objection will be sustained. That is not in his line of business.

Mr. Kinsworthy: I save my exceptions.

The Court: All right.

By Mr. Kinsworthy:

Q. Mr. White, who takes care of these crossings, what department?

A. They are maintained by the Maintenance of Way.

By the Court:

Q. What department?

A. Maintained by the department of Maintenance of Way; that department maintains the tracks.

By Mr. Kinsowrthy:

Q. Does the maintenance of these crossings come under your jurisdiction, or come under your department and supervision I mean?

A. Not directly; in a sense I would say they do; they come under the general road master—when I was general road master they were under me, and just now they are indirectly.

Q. How long were you General Road Master?

A. Five years and a half.

Q. How long has that been since you were General Roadmaster?

A. Since prior to the first of this month.

Q. Wasn't Texarkana in your territory?

A. For three years, yes.

Q. Was Little Rock?

A. Yes, sir.

Q. I will ask you if, as general roadmaster you had an opportunity to observe the traffic across various crossings, those that were protected and those unprotected, and those that had viaducts on the crossings?

247 A. Yes, sir. I made a considerable study of it at different times.

By the Court:

Q. How long since?

A. It has been three years since I looked into Texarkana, and about eighteen months since I studied the conditions in Argenta.

Mr. Jones: We object to the question and answer, and ask to have the answer excluded. What he did three years ago wouldn't be competent. There was no such law as this passed then, and eighteen months ago there wasn't any such law. The question is, the conditions right now, and what he did three years ago or eighteen months ago has no bearing on this case and it is not competent, and he cannot answer that. That is not competent.

Objection overruled: exceptions saved.

By Mr. Kinsowrthy:

Q. In building viaducts where are they generally put, as to traffic across the track?

A. Put at a place to accommodate the most people going over a grade crossing.

Q. As to building underground crossings, why are they built?

A. To remove the traffic from a grade crossing.

Q. When you put a watchman at a crossing, why is he put there?—as to the traffic. In other words, do you place them on a crossing where there is very little traffic, or where there is a great deal of traffic?

A. It is determined by the amount of traffic over the crossing; if a watchman is justified, why he is put on, or if it is necessary.

Q. If he is justified on account of the amount of traffic he is put on?

248 A. Yes, sir.

Q. Well, also, that would have something to do with the number of trains that would cross over the track or crossing—that would also have something to do with it, would it not?

Mr. Jone: I object to that question.

The Court: The objection is sustained.

Mr. Kinsworthy: We save our exceptions.

Q. Would anything else have anything to do with it, except the volume of people over the track?

A. Certainly; to determine whether a crossing watchman should be needed or not, we take into consideration both the traffic over the highway and the traffic over the tracks. It would be useless to put a watchman on a place where there is no trains run over it.

Cross-examination.

By Mr. Jones:

Q. Mr. White, were these blue prints made by you?

A. No, sir.

Q. Was the engineering work from which the work is taken, was that done by you?

A. No, sir.

Q. Who was the work done by?

A. Most of the blue prints indicate the initials of the man, except the field notes and the man drawing up the plans.

Q. Do you know how old they are at the present time?

A. They will show the dates.

Q. You had nothing to do with either the doing of the work from which the blue prints were taken, or making the blue prints themselves?

249 A. I verified all the grade crossings and viaducts and supervised the indicating of these crossings on the blue prints.

Q. So far as indicating the crossings, you had nothing to do with the work from which the blue prints were made?

A. No, sir.

Q. Where are they kept?

A. The original copies are on file at the various division offices.

Q. Have you personally gone over the different yards?

A. Yes, sir.

Q. Have you personally surveyed the yards yourself?

A. No, sir.

Q. Could you swear that these blue prints are correct, and the grade crossings, and the various other things in the various yards; could you swear that they are correct?

A. Your question covers a little too much. I can say they are in general correct, from my knowledge of the general conditions and by examination of the prints.

Q. You have no knowledge personally of the correctness of the blue prints and of the crossings, except that these maps are just kept in the office and they are purported to be the blue prints of the yards?

A. That is all. The originals of course are on file.

By Mr. Kinsworthy:

Q. These various offices keep a record of the yards?

A. They have the original copy from which these prints were made.

Q. Brought down to date?

250 A. Yes, made and brought down to date.

Q. And a copy is kept in each office?

A. Yes, sir.

Q. And they are brought up to date?

A. The original tracings are kept up to date, yes, sir.

Q. And they are permanent records of the office?

A. Yes, sir.

Q. And the blue prints are copies of the permanent records?

A. Yes, sir.

Q. And these blue prints are kept as near correct as they can be kept?

A. Yes, sir.

Mr. Jones: I move that the blue prints be excluded. He had nothing to do with the making of them, and has no personal knowledge of these things, and we move to exclude every one of these blue prints.

The Court: Let me ask a few questions.

By the Court:

Q. What position do you hold at present?

A. Engineer of Maintenance of Way of the Southern District of the Iron Mountain Railroad.

Q. Does that include all the towns of which you have introduced these blue prints?

A. Yes, sir.

Q. Are they all within your jurisdiction?

A. Yes, sir.

Q. Filling this position do you have the custody of these blue prints—do they belong to your department, or what department do they belong to?

A. They belong to my department, indirectly; directly,
251 the Assistant Engineer's.

Q. Who is in charge?

A. I am in charge of the Southern District.

Q. You say you did not make the blue prints yourself?

A. No, sir.

Q. Have you any personal knowledge as to whether or not these blue prints are correct, or not?

A. Yes, sir, there's a number of changes on some of them that I have made in the last six years, making the changes as the new

tracks are constructed, and in doing that we simply tie into two or three permanent points, and they are recognized there as permanent points; and then we tie in our new work where it happens to be. There's only one point on some of these maps that I can testify to personally, and in part of the others; the Assistant Engineer does some of the work.

Q. Are you prepared to state whether or not these blue prints correctly state the conditions of the various yards which they purport to report, at the present time?

A. Yes, sir.

Q. Are you prepared to state they are correct at the present time?

A. I would take them for correct. If I were sent out to make any changes in any one of these yards I would simply check as many as three permanent points and then proceed with any additional work I wanted to tie onto represented on that particular map.

Q. From what were these blue prints copied, or prepared, if they were copied?

252 A. Well, take Little Rock or Argenta yards: the engineering corps there in 1910 made a resurvey and took original notes of the main track and alignment and made a recheck of the original notes and made a set of new maps, and these new maps of course superseded the old maps that have been changed from time to time for the last fifteen or twenty years.

Q. Now that was in 1910, I believe you state?

A. Yes, I think that is the date.

Q. Have these maps been brought up to date since 1910, to the present time?

A. Yes, sir; as there are changes made in the tracks and additional street crossings are opened up they are entered on the original, what we call the tracing, a map made of cloth, and then the prints are made from this tracing cloth.

The Court: The motion to exclude will be overruled and your exceptions will be saved.

By Mr. Jones: You have no personal knowledge—your own personal knowledge—of whether these prints are correct, or whether or not they are incorrect?

A. Only in part.

Q. What ones are there among the ones you have exhibited that you know are correct?

A. Well, I know parts of Little Rock and parts of Argenta, and parts of Hope and Texarkana, and Pine Bluff, Wynne and Paragould.

Q. Just these parts of these cities that you have named that you can testify in person are correct copies of the tracks in the various yards?

253 A. Yes, I have checked the work of parts of these that I have named, and in fact performed some of the work.

Q. How much time have you spent in the switching yards of Argenta?

A. As General Road Master I spent about a day a week in Argenta and Little Rock.

Q. How do the blue prints show all the tracks in all the yards that they cover?

A. I don't get it.

Q. Do the blue prints you have exhibited of the tracks of the various cities, do they show the tracks—including the spur tracks and industrial tracks—that switching is done over?

A. Yes, sir.

Q. Do they show the buildings put beside the tracks?

A. Show the buildings immediately adjacent to the tracks, yes, sir.

Q. Do they show the different buildings where the buildings make blind curves or crossings?

A. No, the height of the building is not shown.

Q. They show where the buildings make blind crossings?

A. There is no reflection; it shows the buildings, I could tell whether the crossing is blind or not.

Q. You couldn't tell whether the curve is blind or not by the blue prints?

A. No, sir.

Q. How many tracks, if you know, in Argenta where there is only one entrance to it?

A. No, I couldn't tell that, I would have to check over the blue prints.

254 Q. There are various tracks, aren't there?

A. Yes, sir.

Q. Various tracks in Little Rock where there is only one entrance to them?

A. Yes, sir.

Q. And various tracks in all of these cities where there is only one entrance to them?

A. Yes, sir.

Q. Now you testified something about a "flat" yard; what do you mean by that Mr. White?

A. Where cars won't roll under their own weight.

Q. You testify there are no flat yards in Arkansas?

A. No.

Q. Did you testify that there were none on the main line in Arkansas?

A. No, sir.

Q. There are various places in the cities of Little Rock and Argenta and Hot Springs, and the rest of these places, where if you turn a car a loose it will roll of its own weight, are there not?

A. Yes, sir.

Q. Quite a good many of these tracks?

A. Yes, sir.

Mr. Kinsworth: What you mean, there were no hump yards, or gravity yards?

A. There are no hump, or gravity, yards, no, sir.

By Mr. Jones:

Q. Is a flat track the opposite to what is known as a hump track, or hump yard?

255 A. Yes, sir, we have two classes; we have what we call a flat yard and a hump yard, or a gravity yard.

Mr. Kinsworthy: I object to anything in regard to a hump, or gravity, yard. We have no hump, or gravity, yards on the Iron Mountain. Of course it is just a matter of proof.

The Court: It is a matter of proof, and I think he can ask the witness about it. He just asked if there is any difference in the yards. He wants to find out if there are any hump yards on the Iron Mountain.

Mr. Kinsworthy: This is a different proposition.

The Court: I would like to find out myself.

By Mr. Jones:

Q. When you state that all yards in Arkansas are flat, you don't mean to tell the court that if you turn a car loose on the various tracks in these cities, it won't roll of its own weight?

A. I mean to say that in a flat yard you cannot switch them the same as you can in a gravity yard; you've got to handle the cars differently and you have to place them where you want them instead of letting them roll to where you want them.

Q. It is a fact, isn't it Mr. White, in flat yards, as well as hump yards, in various places, if you turn a car loose it will roll of its own weight?

A. Some places, yes.

Q. Are you familiar with the conditions of the main line of the Iron Mountain, of the Valley Division in Arkansas, say from Rock Street to Union Station in the City of Little Rock?

A. Yes, sir.

256 Q. That is all down grade, is it not?

A. It is down grade from Rock street towards Union Station.

Q. If you turn a car loose at the Valley Depot, on the Iron Mountain Division, won't the car roll all the way to Union Station, of its own weight?

A. Not unless it is started.

Q. If you push the car across Rock Street?

A. Not without being pushed.

Q. I say, if you push the car across Rock Street and start it to roll, won't it roll clear to Union Station?

A. It sometimes would.

Q. A car, unless it is protected, or blocked, would roll that distance, would it not?

A. Not every car; it has been known that some cars have, but as a general thing I would say no.

Q. Cars have rolled that distance?

A. Yes, sir.

Q. How many blocks is that? Do you know, approximately?

A. About fourteen.

Q. It is about eighteen, isn't it, as a matter of fact?

A. Eighteen; I was counting from Main Street.

Q. Are you aware of the conditions with reference to the yards at Hot Springs, with reference to grade, as to the main track?

A. Yes, sir.

Q. Are you aware of the condition of the spur tracks and industrial tracks at Hot Springs?

257 A. Not the industry tracks, not all of them.

Q. They are all on a grade?

A. Some of them.

Q. On some of them if you turn a car loose it will roll back?

A. Just the same; some are up and some are down.

Q. The profile of the Iron Mountain you spoke of, who was that made by?

A. The profile itself, I think, will show the man it was made by.

Q. Was that made by you?

A. No, sir.

Q. Where is that kept?

A. It is a permanent record and kept at the different offices.

Q. You couldn't testify of your own personal knowledge whether that is a correct map or not?

A. Not all of that.

Q. That has no reference to switching at all or the industry tracks?

A. No.

Q. I believe you stated, Mr. White, that there are fifty-four crossings in Argenta; is that correct?

A. Yes, and Little Rock.

Q. That included both the grade crossings and crossings that are not on a grade?

A. No, just the grade crossings.

258 Q. How many crossings in Little Rock and Argenta across the public streets where there is no grade?

A. I don't catch your question?

Q. What do you mean by grade crossings?

A. Where the street crosses the track at grade, on the same grade as the track, the street and the track are on the same grade.

Q. What do you mean, that the street and track are level?

A. No, on the same grade, not level but on the same grade at any corresponding point.

Q. At the crossing?

A. Yes, sir.

Q. There are various crossings in Little Rock and Argenta where pedestrians cross and where teams drive across, what is known as a team track, that are not shown on that map, are there not?

A. They are shown—

Q. They are not included in your statement of fifty-four?

A. There are fifty-four streets, or highway crossings, across the tracks at grade. They may cross a track at one point and six at

another, but the different crossings are counted individually as a crossing.

Q. There might be several crossings where the tracks cross at a public highway and you'd count that as one crossing, would you not?

A. If they are grouped, yes.

Q. Now at various points at Little Rock and Argenta where pedestrians cross, they are not included in the fifty-four crossings?

A. Yes sir, they are included, as I said before; if there are several tracks across one highway they are grouped and it is counted as a crossing.

Q. Are you aware of where the Valley Depot is at Little Rock?

A. Yes, sir.

Q. What is the distance between the colored waiting room of the Valley Depot in Little Rock and a track known as alley track next to the depot?

A. Well from the face of the building to the center of the track, about twelve feet.

Q. What is the distance between the face of the building and the distance where a man would have to stand to get struck by a car passing down that first track?

A. You mean standing on the alley track?

Q. Yes, with reference to the colored waiting room of the depot?

A. He would have to stand back of the track. There is a space there of some six or seven feet.

Q. Now Mr. White, isn't there a place at the colored waiting room at the Valley Depot in Little Rock that a man cannot stand sideways on account of that track?

A. Well, going to some of the industries where the track is made adjacent to the building, yes.

Q. The colored passengers get on at that point going to other places, I mean passengers for other towns?

A. They don't get on there if that alley track is occupied.

Q. They wait in this room, do they not?

A. Yes, sir.

Q. They walk across this alley track to the track the passenger train runs on, do they not?

A. Yes, sir.

Q. Are you acquainted with the Iron Mountain yards in Argenta?

A. Yes, sir.

Q. Do you know the number of men employed in the Iron Mountain yards at Argenta?—approximately, do you know?

A. No, sir.

Q. A good many men are employed, aren't they?

A. Yes, sir.

Q. Several hundred?

A. Are you talking about the yards, or something else?

Q. I have reference to the Iron Mountain shops at Argenta?

A. Yes, sir, several hundred at the shops.

Q. These men walk across the various tracks going to their work?

A. Some of them do.

Q. The men that live in Little Rock—on the Little Rock side—and at various points in Argenta, they go across these tracks to go to their work, do they not?

A. They do some of the storehouse tracks, yes, sir.

Q. Now these paths those men walk in across there that are employed in the Iron Mountain shops, they are not shown or
261 not mentioned when you say there are fifty-four crossings in Little Rock and Argenta?

A. Those are not crossings.

Q. You have no reference to those?

A. I simply stated street grade crossings.

Q. Are you aware of the location of the levee at Little Rock?

A. The wharf?

Q. Yes.

A. Yes, sir.

Q. Do you know approximately the number of teams and pedestrians that go across these crossings and between these tracks every day?

A. No, there is enough to justify a watchman at that point.

Q. There are several hundred people pass up and down those tracks every day, are there not Mr. White?

A. I might say several hundred, yes.

Q. Is the watchman—is he familiar with the switching conditions?

A. Yes, sir.

Q. Is he given a switch list?

A. No, sir.

Q. Does he know what move the switch crew is going to make next?

A. He is there to see, that is his business.

Q. Does he know what that switch crew is going to do next?

A. He might not know what they are going to do next; he knows what they are doing at that time.

Q. Do his instructions say when those cars are going to
262 be kicked, or just when the cars are going to be dropped across the crossing?

A. No, sir, he doesn't know other than to see when they are going to be.

Q. He is never notified in advance?

A. I expect he would be notified if they were going to kick the cars, or something that was unusual.

Q. You don't know anything about it, do you Mr. White?

A. I just said except when I was there.

Q. How many tracks between the Valley Depot of the Iron Mountain in Little Rock and the last track going towards the river?

A. Which crossing do you have in mind now?

Q. The Rock Street crossing?

A. In going down in the wood yards or down on the wharf?

Q. I mean going down Rock Street; how many crossings across Rock Street?

A. I think four.

Q. Isn't there as a matter of fact thirteen crossings across that street?

A. What I'm trying to get in my mind is what you mean?

Q. Rock street crossings.

A. Going down into the wood yards, you'd have to count these.

Q. These tracks are used for switching purposes, are they not?

A. Not in the strict sense of the word; they are not used for switching, they are used for team tracks.

Q. They operate cars attached to switch engines up and
263 and down these tracks, do they not?

A. At times.

Q. They are industrial tracks and lead off from industrial tracks, do they not?

A. Well, take alley track; that is strictly an industrial track; and the other track there they have for team tracks.

Q. Isn't it a fact—aren't all these tracks there that you know of, that are team tracks, aren't they known as industrial tracks?

A. Well, different people might apply different names. The alley tracks are strictly known as industrial tracks; the other ones are team tracks.

Q. They are tracks where cars will be spotted and teams will come there and unload.

A. Yes, sir, those are team tracks.

Q. They pass these various crossings to get there?

A. Some of them, yes.

Q. The alley track you speak of, what position, or what direction is the flagman's house from the alley track?

A. North.

Q. That is towards Markham street, is it not?

A. No, it is towards the river.

Q. What track, with reference to the rest of them, is the watchman's house situated, at that point?

A. The watchman's shanty is immediately adjacent to the main track.

Mr. Kinsworthy: The reason I didn't go into all of this,
264 these blue prints show that watchman's shanty, and so on.

The Court: Mr. Jones you might look at that to see about that.

Mr. Jones: They don't show exactly what I want to show—what to show to the Court, to call the court's attention to, is that the people pass up and down these tracks; to get to them they have to pass up and down here.

Mr. Kinsworthy: They do that on the main line.

The Court: Go ahead and try to save as much time as you can.

By Mr. Jones:

Q. The flagman is on the side of the track towards the river, is he not?

A. Yes, sir.

Q. Now these passing trains, freight trains and engines switching

cars, operate between him and the tracks off in the other direction, do they not?

A. He is out on the ground where he is most needed; maybe he'll be on one track and maybe he'll be on the other.

Q. There is considerable business at that point with reference to moving cars?

A. Yes, sir.

Q. Now you speak about the viaduct over Main Street in Argenta: Isn't it a fact that quite a great deal of time that viaduct is out of repair, and don't you know they won't even let any people across?

A. No, I can't say that. The city had it out of service possibly a couple of months laying a new floor, last year.

Q. You say it was out of service a couple of months last year?

265 A. I think the city had it out of service.

Q. It was out of service for traffic, for the children, and teams and pedestrians?

A. The pedestrians, I understand, never stopped; it was simply the wagon traffic that stopped.

Q. Don't they use this crossing for traffic on that street under that viaduct day and night?

A. They use it same as any other grade crossing.

Q. Isn't it a fact that flagman is not there after dark?

A. No, they have a night flagman there.

Q. At night that crossing is unprotected by a flagman, is it not?

A. No, not as I recall; there is one night flagman. If you are familiar with the situation, there are two flagmen in that immediate vicinity, as I understand. One of these men is on at night.

Q. Isn't it a matter of fact that both of these men quit work at six o'clock in the evening?

A. It is just guess work as to that; I have not been on the ground.

Q. These switch engines operate up and down these tracks all day and night, do they not?

A. Yes, twenty-four hours a day.

Q. And there is a considerable traffic over that track and across that track all the time?

A. I wouldn't say considerable.

Q. Enough that they realize that they require a protection at that crossing by a flagman?

A. If we didn't consider it so we wouldn't have a flagman
266 there twenty-four hours a day.

Q. You consider that a crossing there—that grade crossing for teams, pedestrians, women and children?

A. During different parts of the day, yes.

Q. Do you know anything about anybody being struck one night there?

A. No, sir.

Q. Mr. White, do you remember of a car being kicked, or dropped, that struck a boy about a year ago—a boy on a bicycle—at that place?

A. I don't remember it.

Q. I believe you say the first crossing, going towards Texarkana, is twelve blocks from the Union Depot; is that correct?

A. About twelve blocks from the river. I would have to check the blue print to be accurate.

Q. What crossing do you have reference to as being the first crossing?

A. I would call it Fifteenth Street.

Q. Isn't there a crossing at Wolf Street?

A. No, I don't think there is; the blue print don't show it.

Q. Wolf Street is four blocks from Union Station?

A. I'd have to check those by names; I've got them by numbers.

Q. Isn't there a crossing at Battery?

A. Where is Battery?

Q. Next to Wolfe?

A. No, sir.

267 Q. Isn't there a crossing this side?

The Court: He can refer to the blue print.

A. I think the crossing is located about twelve blocks from there.

The Court: Don't you think if it is possible you should get the blue print and show exactly, without asking him to guess at it?

By Mr. Jones:

Q. Now with reference to the viaduct over the yards at Texarkana; how close is that to what is known as the Circus Grounds at Texarkana, Mr. White?

A. I don't know what you mean; do you mean the Fair Grounds?

Q. Yes.

A. It is several miles to the Fair Grounds.

Q. There is a pedestrian path under that viaduct, where citizens walk, is there not?

A. No, sir.

Q. Isn't there any traffic under that?

A. No traffic.

Q. No pedestrians walk under there?

A. Occasionally a man walks across there.

Q. Mr. White, do you know whether or not a city ordinance of Argenta was passed for the purpose of requiring them to place a flagman at Main Street crossing on account of the business done at that point?

Mr. Kinsworthy: It doesn't make any difference whether there was an ordinance passed or not; we've got a watchman there, and it doesn't make any difference whether he is kept by an ordinance or kept there otherwise; we keep him there.

268 A. We have more men at crossings than the ordinances require us to put there.

Q. What about the conditions at Hot Springs? Didn't they require you to put on bells at the different crossings; wasn't that done by the city ordinance?

A. I don't think they required it. I think they took it up with the officials; I think the officials of the road took it up with the city officials and they put them on.

The Court: The ordinance will show.

Mr. Kinsworthy: We can agree as to them.

Witness excused.

269

Testimony of B. W. Moore.

B. W. MOORE, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. B. W. Moore.

Q. Where do you live, Mr. Moore?

A. Little Rock, Arkansas.

Q. What is your business?

A. Train Master on the Arkansas Division.

Q. On the St. Louis, Iron Mountain & Southern Railway Company?

A. Yes, sir.

Q. What territory do you cover?

A. Little Rock to Texarkana, Pine Bluff to Hot Springs, Gurdon to Womble, Pike City Junction to Pike City, Hope to Nashville.

Q. As Train Master what are your duties?

A. My duties are to supervise the handling of trains, train and engine employees, station force, yards and yard operations.

Q. Do the Yard Masters come under your jurisdiction?

A. The yard foreman of engines in Hot Springs, Gurdon and Hope.

Q. Take Texarkana for instance, who handles that?

A. That comes under the Train Master of Terminals.

Q. Is he under you?

A. He is under the Superintendent.

270 Q. Mr. Moore, what positions have you held in your various work with railroads?

A. Foreman, Conductor, Switchman, Yard Foreman, Assistant Yard Master, General Yard Master, Superintendent, Train Master.

Q. How long did you act as switchman?

A. About four years.

Q. Were you ever superintendent of Terminals at Little Rock?

A. No sir; General Yard Master of Terminals at Little Rock, General Night Yard Master.

Q. Then you are familiar with switching and the way it is done are you?

A. Yes, sir.

Q. You say Hot Springs is in your territory?

A. Yes, sir.

Q. Can you tell me the amount of cars on the average that are handled in Hot Springs daily?

A. The average number of cars handled in Hot Springs daily is 31.

The Court: Does that include freight and passenger cars?

A. Yes, sir; that is the total average of the number of cars taken in a day, that is handled.

Q. What period does that cover?

A. That covers the period of the last three months of 1913 and the first three months of 1914.

Q. Now tell me the nature of the switching that is done in Hot Springs and how it is done?

271 A. Passenger trains arriving here heads into the passenger station and are taken charge of by the switching crew, taken around the Y, shoved back into the yards at the Round House, remains there until it is then placed for departure at the station again. Freight trains arriving here heads up past the switching lead of the yard where the switch engine comes out and gets hold of the rear end, setting the caboose out, come back and get what number of cars that they can handle, shoving them in, doubling the train into the yard; the yard crew handling the train switches it in accordance—that is to location, in accordance to where it belongs to the various industries or tracks assigned to certain commodities.

Q. In handling the passenger train in switching it, is it switched as an entire train or cut up and switched?

A. It is turned around the Y and switched as an entire train, shoved into the tracks at the receiving yard, and if the track doesn't hold the entire train it is set over on to some other track.

Q. How many men do you work with the switching crew here at Hot Springs?

A. Foreman and two helpers, engineer and fireman.

Q. Now tell us how those men would be distributed on this passenger train when you start to switch it as it comes into the depot to the time you get it down to the yard, how the men would be distributed on the train?

272 A. The man following the engine, the switchman following the engine would couple the engine on to the rear end of the train; the other switchman would go to the head end of the train; it would be the rear end of the train starting out of the station. He would attach what is known as a tail hold car and air connection or a back up hose for the purpose of controlling the movement by air from that end of the train. He would remain in that end of the train, and the foreman would locate himself in accordance with different positions of the train he seen fit to locate himself, passing around going to the East Y. After going over the East Y switch the man on the rear end of the train would throw the switch, giving the signal to back up and shove around the Y, and the man following the engine would close the switch after passing over it, running to the head end of his train, at the end of his train that the engine is attached to and they would pass around the Y reversing their

position as to the movement in the direction in which they are travelling until they return back through the yards, where the rear man would ride the rear end of the train into the receiving track, and if it was to be doubled over why the foreman of the engine or the man following the engine would make the out doubling over and blocking or setting brakes on the cars as the case may be.

Q. Now, Mr. Moore, in handling the passenger trains that are switched I will ask you whether they are handled that way connected or not?

273 A. Yes, sir.

Q. Now you say that one switchman would be on behind and would have a whistle to give alarms by?

A. Yes, sir.

Q. Could he give signals to the engineer?

A. Yes, sir.

Q. How?

A. He could give signals to the engineer by either hand or he could apply his brake.

Q. Could he stop the train?

A. Yes, sir.

Q. How?

A. By application to the air.

Q. Now in going back, in backing back I understand the back end of the train would then be going in front?

A. Yes, sir.

Q. And this switchman would be on the back end to keep a lookout and give signals?

A. Yes, sir.

Q. Could he give signals to the engineer?

A. Yes, sir.

Q. How?

A. By application of the air and by hand.

Q. Could he stop the train?

A. Yes, sir.

Q. The same as the engineer?

A. Yes, sir, the same application, the same effect on the train would apply from his application there as it would from the engineer's application.

274 Q. Does he have anything on the back end to give an alarm by?

A. He has a back up hose with a whistle attached to it.

Q. I will ask you how many men are necessary in your judgment besides the engineer and fireman to handle that passenger train and do the switching you have spoken of?

A. Well two men can handle it as far as that is concerned.

Q. The way they do it how many men would be necessary to do it?

A. The way they do it why two men handles it, but the other man is with the crew at the time, but the two men does the work.

Q. You mean the foreman is along with them?

A. Yes, sir.

Q. I will ask you now if you had a third helper could he be of any benefit, if so, what benefit could he be in handling that train?

A. Riding around.

Q. Could he be of any benefit?

A. He would not, none whatever.

Q. I will ask you then if a third man was added to the crew would he be of any assistance as to the safety in going across crossings?

A. Absolutely none.

Q. Would he be of any benefit as to the doing the work?

A. No, sir.

275 Q. Now in handling freight cars in Hot Springs, do you know how many cars are handled on the average at one time, freight cars in going to industries?

A. The maximum as an average I would say not over eight.

Q. As a rule how many freight trains do you have into Hot Springs a day?

A. One train and one train out.

Q. Freight trains?

A. Yes, sir.

Q. How many cars in these freight trains?

A. They average six hundred tons, or from sixteen to eighteen cars in a train, that is loaded cars, and 25 to 26 empty cars out.

Q. Little Rock I believe is in your territory is it not?

A. My headquarters.

Q. Are you familiar with the yards and switching in Little Rock and Argenta?

A. I was General Yard Master there from 1907, November 1st, until January, 1910.

Q. How many men composed the switching crew at the time you were Yard Master?

A. There were a foreman and two helpers with all the engines, with the exception of what is known as the hold engine which is located at the north end of the yard, and the south engine which was located at the south end of the main yards at Argenta.

Q. That is you had an engineer and a fireman and a foreman and two helpers?

276 A. Yes, sir.

Q. I will ask you in your judgment taking the present conditions is a crew consisting of an engineer and a fireman, a foreman and two helpers, sufficient to handle the switching in those yards?

A. Yes, sir.

Q. Does a third man add anything to the safety of the handling of those switch engines as to the public going across crossings?

A. No, sir, none whatever.

Q. Now at the Rock Street crossing—they have asked something about that, are you familiar with it?

A. Yes, sir.

Q. Is there a watchman kept there?

A. Yes, sir.

Q. What is the duty of this watchman kept there?

A. The duty of the watchman is to watch the approaching movement of trains and of cars and to warn the people from the tracks.

Q. Now when he is standing at the crossing if they were going to switch to a certain track would he know it?

A. Yes, sir, he would tell from the direction in which they were moving or how they were moving whether they were going ahead or backing up.

Q. Describe how the work is done if they are going on to a certain track and how the watchman would know it?

A. They would approach the crossing from either direction a sufficient distance for the switchman to know they were coming and he would guard the public from the crossing from going on to the tracks.

Q. Take the other track mentioned at the Valley Depot near the colored waiting room, how is switching done in there, Mr. Moore, and when?

A. That track is used during the night into the merchandise houses and into a brewery there and a few more industries; that is the brewery distributing track.

Q. How are the cars put in there as to pushing or kicking?

A. They are shoved in. The track in front of the Valley depot is a lead going to the Rock Street freight house.

Q. What per cent of the cars are put in there at night?

A. Ninety per cent of the cars are put in there at night and taken out at night.

Q. Are there any passenger trains passing during these times?

A. There is 103 is the only passenger train, and she is due there at 8:50 p. m. I think, somewhere in that neighborhood.

Q. Well is there any switching done on that track while there is a passenger train there?

A. Absolutely none during my knowledge of the operation, and I don't think a switchman or the foreman would perform that kind of service.

Q. Don't the rules prevent movements of that kind?

Mr. Jones: We object.

278 The Court: Objection sustained.

Q. Are there any rules upon movements of that kind or practices?

A. The rule prohibits trains, either passenger or freight, to pass the passenger train discharging or receiving passengers at a passenger station.

Q. Take Hope for instance, is that in your jurisdiction?

A. Yes, sir.

Q. How many cars on an average are handled daily at Hope, freight cars?

A. The average at Hope was 76.

Q. A day?

A. Yes, sir.

Q. What kind of switching is done with those cars?

A. Hope is exclusively an industrial division, with the exception

of a connection with the L. & A. Railroad and the A. & L. branch of the Iron Mountain, and the turn around of one freight train known as 71.

Q. What do you mean by a turn around?

A. That is the end of the Division or the Terminus of that train.

Q. You don't turn a train around—do you?

A. We turn the crew around.

Q. The train in other words runs there and then goes back?

A. All the business that accumulates or comes into Hope or for connections with the L. & A. Railroad Company or industries at Hope or for points on the Nashville branch, they are brought in and set out by freight crews and handled by a switch engine.

Q. Can you tell me what the average number of cars handled there at a time by switch engines are?

A. The class of switch engines used at that point cannot handle more than fifteen or sixteen loads.

Q. Do you know the average number that they handle at a time, if you do I would like to know it?

A. The average number would possibly be five or six cars.

Q. What would be the maximum?

A. The maximum not to exceed eighteen loaded cars.

Q. Taking the switching in Hope, you are familiar with it, could that switching be done with efficiency to the Company and safe to the public with a foreman and two helpers as with three?

A. Yes, sir.

Q. I will ask you if a third man adds to the safety of the public having him on there?

A. None whatever.

Q. Take Texarkana—do you know how many cars are handled at Texarkana daily on an average?

A. Texarkana average is 412.

Q. How many of those are passenger coaches, can you tell me?

A. This number is exclusive of passenger equipment.

Q. Does that include all through freight trains?

A. Yes sir, it includes the individual car movement through that point.

Q. That includes all trains I understand coming from Texas and going through?

A. Operating through the Iron Mountain connection.

Q. What per cent of those cars if you know would be switched across a grade crossing by switch crews, not handled by the train crew but after the switch crew got hold of them?

A. The only grade crossing located at Texarkana is 37 car lengths north of the north lead of the switching yard and it would be seldom they would handle that many cars, only to make a total certain number of cars from one track to another, but not in switching service. In the performance of the usual breaking up and classifying cars they wouldn't — this crossing; they would reach in going to the Ice plant or a connection with the Cotton Belt.

Q. Can you give me an idea now about what per cent of the freight cars that go through Texarkana would not be handled by a switching crew over a grade crossing?

A. In my judgment I wouldn't think there would be three per cent of the cars that would reach this crossing and possibly not that many when any trains pull over the crossing.

Q. You are familiar with the yards at Texarkana are you?

A. Yes, sir.

Q. Now I will ask you in your judgment and from your experience as a railroad man, could a switching crew composed of an engineer and a fireman, a foreman and two helpers, do the switching there with as much safety to the public as to have an additional man?

281 A. Yes, sir.

Q. Would an additional man add anything to the safety of the public?

A. None whatever.

Q. Would he add anything to the efficiency of the crew in doing the work?

A. Well not at Texarkana.

Q. Take Gurdon for instance; is that on your Division?

A. Yes, sir.

Mr. Jones: That is not a City of the Second Class and I don't think it would be competent. I object to the testimony.

The Court: Objection sustained.

Mr. Kinsworthy: The defendant offers to prove by the witness, B. W. Moore, that Gurdon is not a City of the second class, but that it is a Terminal and division point where the Womble and Pike City branch and the Louisiana Division of the Iron Mountain make connection with the main line; that the switching done in Gurdon is done across the public streets and in the main part of the town, and that the number of cars handled at Gurdon is far greater than the number handled at Hope, and that the work at Gurdon is done as well as it is at Hope and with as much safety to the public, and there they have only an engineer and a fireman, a foreman and two helpers with the switching crew.

Therefore the court refused to permit said testimony to be introduced and the defendant objected to the ruling of the court in so holding and asked that its exceptions be noted of record.
282 which was accordingly done.

Cross-examination.

By Mr. Jones:

Q. How long has it been since you have performed any actual service as a switchman?

A. You mean by that drawing pay as a switchman?

Q. Yes, sir, being a switchman?

A. I think the last time that I done any switching as a switchman was in 1893; as a foreman in 1895 or 1894.

Q. What official position do you now hold with the Iron Mountain?

A. Train Master.

Q. Are you classed as an official of the Iron Mountain Railroad?

A. Yes, sir.

Q. As Night Yard Master at Little Rock and Argenta you are quite familiar with the trackage conditions there are you not?

A. I am I believe.

Q. How many cars does *does* track number 9 hold on the Iron Mountain yard, what is called the Valley track?

A. I think it holds 25.

Q. In the Iron Mountain yard upon the main yard?

A. You mean the Fort Smith yard?

Q. No, the Iron Mountain yard in the whole yard?

A. I think 57 cars.

283 Q. Did you ever have that track shoved from the Mountain yard into the Fort Smith yard?

A. I cannot recall that I ever did.

Q. Did you ever see it done?

A. I don't recall that I ever seen it shoved into the Smith yard.

Q. Did you ever see any string of cars shoved from the Mountain yard around into the Smith yard?

A. I have seen them shoved with an engine pulling them.

Q. I asked you if you ever saw a cut of cars of any length pushed from the Mountain yard around into the Smith yard?

A. Not at night.

Q. Did you ever shove the Fort Smith cuts from these tracks around into the Mountain yard into the whole yard?

A. Yes, I shoved them down.

Q. And in doing that you crossed two public street crossings, one at Ninth Street and one at Tenth Street didn't you?

A. No.

Q. How did you get around there, how did you get them from the Smith yard without going over those two public street crossings?

A. From the Smith yard to the whole yard?

Q. Yes, sir.

A. They come across on Main Street there.

Q. Didn't they come across on Ninth Street there?

A. Ninth Street wasn't open there then. Fourth and

284 Sixth Street are the only streets open through there.

Q. But you did shove them over Main Street?

A. Main Street was a viaduct then. There was no under-crossing at Main Street when I was there.

Q. Was there a crossing flagman at Main Street?

A. No; they wouldn't permit an underfoot crossing, pedestrians wasn't allowed to go under there at that time. You will remember that was the case until within the last few years.

Q. How long were you General Yardmaster there at nights?

A. I came there November 1, 1907, and stayed there until 1910 when I went with the Valley Division as Train Master.

Q. You mean to tell the Court that that street was closed all of that time?

A. No, they had a viaduct there.

Q. I am talking about underneath, you had a flagman there in the day time didn't you?

A. Not there, no.

Q. Did you ever see any cars over in Argenta kicked across a public crossing.

Mr. Kinsworthy: I object.

The Court: The theory on which this law was passed was for the better protection and safety of the public; its object was to promote safety for one thing; any testimony along the lines of things that were done, whether they were done according to the rules of the

Company or not would tend to show the necessity of the
285 act. I will overrule the objection.

To which ruling of the Court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

By Mr. Jones:

Q. Mr. Moore, did you ever see cars kicked over a public crossing either in Argenta or Little Rock, or any other terminal?

A. Yes, sir.

Q. Did you ever have a car dropped, cars dropped across public crossings, jerked?

A. No, sir.

Q. You never did have your night men jerk cars across Main Street crossing at Argenta to the end of the stock track loaded with stock in order to save time?

A. I never did, no sir.

Q. Never did tell them that?

A. No, sir.

Q. Speaking of the Rock Street conditions at the Valley depot, when passengers are going to board a passenger train don't they have to cross the lead, the house lead and the Rock Street lead, to get to the passenger depot?

A. Yes, sir.

Q. Do you know of any accident ever happening at that particular point?

A. No sir, I don't recall any.

Q. You said that you had an average of 31 cars in Hot Springs daily, that is on the average, now at times you have more
286 cars in here don't you, that is according to the business you have in here?

A. That is an average. We don't run any freight trains on Sundays as a usual thing. That is an average number of cars as my record would indicate.

Q. Speaking of the conditions here at times when business is the heaviest, at Fair times and other times when business is ex-

ceedingly heavy, don't you put on another man on this Hot Springs engine?

A. Yes, sir, put a Yardmaster here.

Q. Does he act as Yardmaster or does he stay with the engine?

A. He acts as Yardmaster; handles the passenger equipment, directs movements and looks after the messages that he might receive, any instructions that he might have pertaining to the movement of the train.

Q. What rate of pay does he receive, doesn't he receive the same rate of pay as a foreman?

A. I don't know; we might have given him a foreman's pay; we might have given him more or less.

Q. Isn't it a matter of fact that he acts as a switchman with the engineer?

A. I don't know, my record would indicate that messages are between him and the Superintendent, and all would indicate that he is Yard Master over here.

Q. You don't know for sure do you?

A. I am not sure I am going to live. I am sure it was understood he was Yard Master because I put him here.

287 Q. Do you know whether or not he helped as a switchman or not?

A. I was right here with him. I helped as a switchman and he helped; we all helped, we were all around here.

Q. You evidently needed five men with the engine that time?

A. When we were handling the public Fair times here?

Q. Then it necessitated another man to protect the public?

A. If we had had the facilities, if the fire hadn't been here it wouldn't have been necessary for us to have it.

Q. Speaking of the rules that you have for the employees to live up to, isn't it a fact that the officials of the Company invite a violation of those rules in the Terminals daily, and in the book of rules laid down by the Company they don't expect the employees to live up to?

A. No sir, they do not, and no one knows it better than you do?

Q. Haven't you daily as an official seen the rules violated in the way of jerking cars across public crossings and kicking cars across public crossings and never do say anything to the men about it?

A. I have said something to the men about it, and have not said anything to them about it.

Q. You di-n't object did you?

A. It wasn't necessary.

Q. You knew it was a violation of the rules to do it?

A. Yes, and I have objected to it.

288 Q. That is rules then that you know that the Company invite the violation of, yet they have them in their book of rules for the employees to live up to?

A. The officials or the agent either cannot be responsible for the employees to violate the rules.

Q. You officials stand by and invite it, haven't you done that?

A. Well no.

Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Moore, I hand you a book, (Handing book to the witness). What is that?

A. That is the Missouri Pacific Iron Mountain book of rules.

Q. Now turn to rule 106 and read it?

A. (Witness reads as follows:

"Rule 106, page 32: "In all cases of doubt or uncertainty the safe course must be taken and no risks run."

Q. I will ask you under that rule what is the duty of the switching crew in switching cars, it matters not how they may be switching?

A. Under that rule, under their knowledge of the business that is required of them as switchmen and night foremen, they are required to perform this service in accordance with the rules and the class of the work which they are doing to the best of their ability and with safety and expediency and good judgment, preventing personal injury and damage to equipment.

Q. How about to the public, how are they to exercise their judgment, how are they to handle it as a matter of safety to the public?

A. There is not a switchman or foreman on the engine or Yard master or any other employee that isn't on the alert at all times to guard against the possible injury to the public on highways and trespassers on the Company's property.

Q. Suppose in handling cars across a crossing that there are two ways by which they could be handled, one would be dangerous to the public and the other would be safe, which would be the way you would handle it?

A. The safe way to handle it would be to approach the crossing under control sufficient to stop if there was anyone approaching or crossing the crossing, or proceed ahead of the cars and flag the crossing, shoving over it under those precautions.

Q. Mr. Jackson asked you if during Fair time and the town of Hot Springs was crowded with people if you didn't put on an extra man, and you said you did, that he was used as a yard foreman. I will ask you if during that time when these passenger trains would be switched around the Y and back as you have stated, would he go with that train?

A. No sir.

Q. Would he have anything to do with that switching, the extra man?

290 A. No, sir.

Q. In handling freight trains, have you been here when the extra man was on when they would be switching freight trains?

A. Yes, sir.

Q. Would he go with the engine then?

A. He would take the switch list and check the cars and turn the switch list over to the man that was handling—the foreman handling the engine.

Q. Would he individually have anything to do with the handling of the cars?

A. No, sir.

Q. Then as I understand even when he was on the switching here was done with the same crew that it is done with all of the time, with a foreman and two helpers?

A. Yes, sir; the fourth man that was put on was put on for the purpose of looking after passenger trains and the information effected to them through messengers and Superintendents he might advise?

Q. Then I understand at that season it takes one man just to give out instructions to the men?

A. Yes, sir.

Q. And under ordinary conditions they know without anybody telling them what to do?

A. Yes.

Q. They asked you about switching under the viaduct on Main Street, Argenta. When you were Yard Master there in 1910 were the cars switched under there as they are now?

291 A. The same lead and the same condition, yes sir, with the exception they have got a watchman on at the Main Street Valley yard.

Q. Did they have any watchman then?

A. No, sir.

Q. Did you switch cars across there then as you do now?

A. Yes, sir.

Q. How much force did you have, switching crew, how many helpers did you have?

Q. We had two men and a helper with all engines except the hold engine and the south end engine.

Q. Did you have any trouble in handling them across that crossing with safety to the public?

A. No, sir, never injured anyone except switchmen while we were over there.

Q. Did you ever in handling the cars across the crossing at that place injure anyone passing over the public crossing, if you remember?

A. I made the assertion no one injured except switchmen. There was a trespasser there that got run over, but he was drunk; that was just between the public crossing and the Main Street.

Q. But he wasn't on the public crossing?

A. No, sir.

Q. I mean on the public crossing, did you ever strike anybody on the public crossing?

A. No sir, not that I know of.

Q. Now you said that you hadn't had charge of the yards
292 or switching since 1910; are you familiar with the manner in which the switching is done now?

A. Yes, sir.

Q. Is that a part of your duty?

A. That is my profession; that is what I learned 28 years ago and have been following it every day since.

Q. Is there any difference in the manner of doing the switching now and in 1910?

A. None whatever.

Q. The cars now are all equipped with safety appliances aren't they?

A. Yes, sir.

Q. Does a man go in between the cars to uncouple them or couple them?

A. Not unless the pin is lodged and if he does he goes in against the instructions of the Company.

Q. I will ask you if you are familiar with it now and up to 1913, the day this law went into effect, is it necessary either to the efficiency of the work or to the public safety to have this extra switchman?

A. Ordinarily with the exception——

Q. I meant with the exception of what you spoke of?

A. No, sir.

Q. With what exception?

A. With the exception where you want to expedite your work, long leads where you have got a number of switches to throw.

Q. Taking the exceptions where you could use a third man
293 would he be used in order to increase the efficiency of the work or for the purpose of protecting the public?

A. For the efficiency of the work.

Q. I will ask you whether he is used where the switching is done across the crossings or where it isn't done across the crossings?

A. He is used where the switching is done in the main yard where there is no crossings as a general thing.

Q. Now there has been some question here asked about the bridge fifty and sixty cars ahead of the engine. I will ask you if you ever had that done on your switching crews?

A. No, sir, I have had an engine on the lead end of the cars and one shoving them across there, one engine on the head end and one on the hind end, but never shoving cars across the Valley Bridge.

Q. Would that be permitted under the rules or custom of doing the work?

A. No sir, and I don't think there is a man working in the yard that would do it. He wouldn't do it; he would refuse to do it unless in case of an accident.

Recross-examination.

By Mr. Jackson:

Q. Mr. Moore, how much time did you ever put in in Hot Springs when switching was being done here?

A. I am here on an average of one to three days of the week, and I was here every day the Fair was going on, and for six days here during the fire, and I like Hot Springs; I come over
294 here pretty often.

Q. You are speaking of the hold engine where you never had any accidents, that engine works right across Main Street doesn't it?

A. If you get hold of 25 cars?

Q. On that engine you have had three helpers all of the time?

A. Yes, and they pulled off one of them.

Q. Before you pulled him off did you think it was necessary to have a third man on the work?

A. I did, when I was nights there.

Q. You did when you were night Yard Master?

A. Yes, sir.

Witness excused.

The Court takes a recess until 1:30 P. M.

295

Testimony of A. R. Taylor.

A. R. TAYLOR, of lawful age, being duly sworn and examined as a witness on the part of defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. A. R. Taylor.

Q. Where do you live, Mr. Taylor?

A. Monroe, Louisiana.

Q. What is your business?

A. Superintendent of the Louisiana Division for the St. Louis, Iron Mountain & Southern Railway Company.

Q. Give us the location of your division—territory over which it goes.

A. It extends from Monroe to Lake Charles, Louisiana; from Vidalia, Louisiana, to Gurdon, Arkansas; from Ferriday to Black River, Louisiana; from Monroe to Huttig, Arkansas; and from Litro to Farmersville.

Q. Mr. Taylor, does your division take in the town of El Dorado, Arkansas?

A. Yes, sir.

Q. Is El Dorado a town of the second class?

A. Yes, sir.

Q. Do you employ in that town three men as switchmen?

A. We have three men assigned.

Q. Mr. Taylor, what other experience have you had in railroad work, besides Superintendent?

A. Five years as agent and operator, in Virginia, Tennessee, and North Carolina; six years as train dispatcher in Mississippi; three years as chief dispatcher in Mississippi; twelve years as train master in Mississippi and Louisiana, and two years as superintendent; a total of twenty-eight years.

296 Q. When were you train master?

A. I was trainmaster on the Illinois Central in 1899, to the latter part of 1904; and on the Iron Mountain in Louisiana from 1906 to 1912.

Q. Are you familiar with the manner of switching cars in the yards in Arkansas and Louisiana too?

A. I am from observation, yes, sir.

Q. Is there any difference in the manner of handling cars?

A. None whatever.

Q. Have you switching yards in Vidalia, Louisiana?

A. Yes, sir.

Q. How large is Vidalia as compared with El Dorado, Arkansas, as to the amount of switching?

A. Well, Vidalia does some more work, considerably more than El Dorado.

Q. How does it compare as to the work being done across public crossings?

A. In Vidalia there's no crossings.

Q. In Vidalia?

A. Yes, sir.

Q. Take Monroe, Louisiana: How does that compare with El Dorado as to the amount of switching done?

A. Monroe is a terminal on the Valley, or Louisiana Division, and there is a great deal more switching. There's fifteen grade crossings in Monroe where as a matter of fact there's only
297 three or four in El Dorado.

Q. Is the switching done similarly?

A. Practically in the same manner.

Q. Take Alexandria: How does that compare with El Dorado, as to the amount of switching done and the size of the town?

A. At Alexandria there are four grade crossings in the yard, and the same number in El Dorado. There is a great deal more switching done at Alexandria than at El Dorado. We handle ten or twenty times more cars.

Q. We will get to that in a minute. Now Lake Charles?

A. We have a great deal more switching there than we do at El Dorado.

Q. Now as to the location of the tracks: do you know the location of tracks at El Dorado as to grade?

A. Yes, sir.

Q. How is it?

A. The yard tracks are practically level, you might say; we have a slight descending grade but not enough for the cars to roll.

Q. Not enough to cause you any trouble; if you just handle a few cars it causes no trouble in switching?

A. No, sir.

Q. I wish you would tell the number of cars you handle daily at Monroe?

A. 366 cars handled daily.

Q. How many cars per engine are handled on an average?

A. 94.

Q. How many cars do you handle in Alexandria?

298 A. 371.

Q. On an average how many are handled to the engine?

A. 96.

Q. How many in Lake Charles?

A. 61, an average of 44 to the engine.

Q. In El Dorado how many cars are handled on an average?

A. 31.

Q. How many engines?

A. Same number.

Q. One engine?

A. Yes, sir.

Q. I believe you stated in El Dorado you had to comply with the law that is being contested, and there you had an engineer, a fireman, a foreman and three helpers to a crew?

A. Yes, sir.

Q. Now in Louisiana—Monroe—Alexandria and Lake Charles—how many helpers do you have?

A. We have an engineer, a fireman, a foreman and two helpers.

Mr. Jones: We are going to object to any conditions outside of the State. The question is what are the conditions here; what would be there has no bearing on what they would do here.

The Court: The Court has already ruled on that.

Mr. Kinsworthy: I want to talk to the court about that. I have laid a foundation; I want to show the similarity of the tracks, the manner of switching and the similarity as to grade—

299 The Court: You misunderstood the Court; I have already ruled that you may go into that.

Mr. Jones: I just want to save my exceptions.

The Court: All right.

By Mr. Kinsworthy:

Q. At Monroe, Louisiana, you have two helpers and they are colored; and at Lake Charles you have two helpers, and they are white men?

A. Yes, sir.

Q. I will ask you Mr. Taylor as to the efficiency of the switching and as to the safety in switching over crossings, how does it compare at El Dorado with these other towns?

Mr. Jones: We object; that is a conclusion for the court to draw from the evidence brought out, not for the witness; and I don't think it is a matter of expert opinion.

The Court: I will permit the same questions as I did the other witnesses. I think it is calling for a conclusion but I will allow him to ask the question.

By Mr. Kinsworthy:

Q. Mr. Taylor, will you please state to the court whether or not the switching crew in Louisiana is sufficient to do the work efficiently, as to the safety to the public at the crossings?

By the Court:

Q. How many have you in the switching crew in Louisiana?

Mr. Kinsworthy: He just stated that there had an engineer, a

fireman, a foreman and two helpers at Monroe, Louisiana, and that they are colored; and at Lake Charles they are all white men.

The Court: All right, I didn't understand.

300 By Mr. Kinsworthy:

Q. Please answer the question now.

A. From my experience the force we employ, or that is employed, is sufficient; we have at Lake Charles now an engine foreman and two helpers, and he also acts as yardmaster. For a number of years at Alexandria the foreman also acted as yardmaster in addition to his duties as switchman. He has two colored helpers, and we have a great deal more business at these two points and a great deal more crossings at Lake Charles and the same number at Alexandria, and these crossings at Alexandria, a great many — peopler go over those crossings than at El Dorado.

Q. How large is Alexandria?

A. Fifteen thousand.

Q. And Monroe?

A. 13,500 at Monroe; and Lake Charles is about 14,500.

Q. About what is the size of El Dorado as near as you can tell?

A. I don't know, but as near as I can tell there is about 4,000 people there.

Mr. Kinsworthy: Let the record show that in his judgment there are 4,000 people at El Dorado, but they claim 5,000.

Mr. Jones: It could be a city of the second class if it has 2,000?

The Court: I understand. A city of the second class under the act don't have to have 5,000, but 2,500.

By Mr. Kinsworthy:

Q. Mr. Taylor how long have you been Superintendent?

A. Two years.

301 Q. You were superintendent before this law went into effect?

A. I was appointed Superintendent August 8, 1912.

Q. How long were you Train Master?

A. I was Train Master there six years.

Q. At Monroe?

A. At Monroe, and my jurisdiction as trainmaster was altogether in Louisiana.

Q. Now when you were operating a switch engine prior to the time this law went into effect, at El Dorado, how much assistance did you have?

A. Engine foreman and two helpers.

Q. I will ask you, as compared with the work done then and now, did you get any more work done, or was it done with any more safety to the public, with the extra man?

Mr. Jones: That is the same question he asked before. And I object.

The Court: I don't see much difference in this question than the others that we asked throughout the trial. It calls for a conclusion as an expert, and if it is asked in the right way I think it is proper.

By the Court:

Q. What experience have you had in dealing with switching cars and switching at crossings and in yards and Terminals?

A. Well, for the last six years I have had practically direct charge of Monroe and Alexandria, Louisiana, two terminals.

Q. Have you had any connection with the yards in Arkansas?

302 A. Yes, sir; at McGehee, Arkansas.

The Court: Ask him the question and let him answer.

(Question read.)

A. In connection with the employment of the extra switchman at El Dorado, I don't consider that it does. There is not more than five or six hours' service for a switch engine during the entire day, and we have not got any more work; in fact, we lay them off part of the time in the dull season of the year.

By Mr. Kinsworthy:

Q. Mr. Taylor, does the adding of the extra man give any more safety to the public?

A. No, sir.

Cross-examination.

By Mr. Jones:

Q. In what way were you connected with the switching in the various yards in Arkansas, Mr. Taylor?

A. At one time my jurisdiction extended to McGehee, Arkansas.

Q. What were your duties in McGehee, Arkansas, with reference to the switch engine crews?

A. Well, during the time I was there as chief dispatcher, I had, practically, control of the yard crew, and I employed the engine foreman.

Q. Now who had direct charge of the switch engine?

A. Why the engine foreman had direct charge of the switchmen.

Q. And who was directly in charge of the foreman?

A. The train master.

Q. Did you have a yard master at that time?

303 A. No, sir.

Q. How long ago has that been?

A. That was in the latter part of 1905.

Q. You have not had any experience since that in Arkansas?

A. Not in Arkansas, but in Louisiana.

Q. What connection have you with the switching crews in El Dorado?

A. I am superintendent of that division.

Q. How often do you go to El Dorado, Arkansas?

A. About once a week, or once every two weeks anyway.

Q. What connection do you have with the switching crews and the manner of their operations at El Dorado?

A. I don't direct the operations; that is handled by the train master.

Q. Any information relative to the switching operations would come through the train master?

A. Well, you might say yes.

Q. That is the information you are basing your opinion on about the necessity of the third man at El Dorado, is it?

A. I spent a number of days at El Dorado and observed these movements myself, and I claim to be competent to pass on that proposition.

Q. Now did you ever switch a box car in your life, Mr. Taylor?

A. I have acted as engine foreman for a few hours at a time.

Q. Well, as a regular job, did you ever act as switchman?

A. No, sir.

304 Q. How many cars, or in how many yards have you switched in Arkansas?

A. None in Arkansas.

Q. You don't know how to switch cars in Arkansas.

A. I do.

Q. What are the different men in the switch crews known by?

A. You will have to make that a little plainer.

Q. What is the name of the different men in the switch crew?

A. Engine foreman and two helpers.

Q. You use the term "helpers"; what are they known by in the switching crew?

A. One is called the field man and the other man follows the engine.

Q. The third man, what is he called?

A. I have not been able to place him yet.

Q. What is his duty at the present time?

A. I don't know.

Q. You are not acquainted with the part of switching that he looks after, are you?

A. He is on the crew; that is about all we know about it.

Q. Then the only yard in the State of Arkansas that you have had any connection with or actual supervision of would be McGehee?

A. McGehee and El Dorado.

Q. But El Dorado is under the direct supervision of the train master.

A. I am responsible for every thing that goes on, on the Louisiana Division, individually.

305 Q. When you were train master did you have any assistants,—when you were train master at McGehee did you have any assistants at the time that you were at that place?

A. No, I didn't have any at that time—at the time I was there.

Witness excused.

306 By the Court: The only testimony referred to in this motion as to the witness, T. A. Shea, on which the court has not already ruled, that is on similar questions, is that relating to the W. & O. V. Railway Company, which is not

more than eighteen miles in length, and is not included in the Act of 1913. The testimony shows that this W. & O. V. Railway Company, while it is not included in the Act, does all of the switching for the Rock Island Railway Company, which is included in the Act, and for that reason I am going to permit that testimony to be introduced, not with reference to the fact it is only 18 miles in length, but the fact that it does switching for the Rock Island. The motion in general to exclude this testimony of the witness, T. A. Shea, will be overruled.

To which ruling of the Court the State at the time excepted and asked that her exceptions be noted of record, which was accordingly done.

307 *Testimony of T. A. Shea, Recalled.*

T. A. SHEA, being recalled to the stand for further examination by the defendant, testified as follows:

Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Shea, what different positions have you held as a railroad man?

A. Practically all positions of the operating department, including train and engine service, and also as a track laborer.

Q. Have you ever acted as switchman?

A. I did.

Q. How long ago?

A. 1904.

Q. Did you ever act as Train Master?

A. Yes, sir.

Q. Yard Master?

A. Yes, sir.

Q. Engineer and fireman?

A. Yes, sir.

Q. When did you act as Yard Master and where?

A. I acted as Yard Master at Jacksonville, Florida, in 1902.

Q. How long did you act as Yard Master?

A. I was about eight months so employed.

Q. How long were you Train Master?

A. I was Train Master on the Iron Mountain to the best of my recollection three years.

Q. How long were you engineer?

A. I was engineer eight months.

308 Q. How long were you fireman?

A. I fired one year.

Q. Is McGehee in your territory?

A. Yes, sir.

Q. Do you live there?

A. Yes, sir.

Q. Can you give the average number of cars handled in McGehee per day?

A. The average number at McGehee is about 550.

Q. How long have you been in McGehee?

A. Since June 1, 1913.

Q. Been working for the Company?

A. I have.

Q. Were you there prior to that time at all?

A. No, sir.

Q. What per cent of these cars that you speak of would be switched across crossings in McGehee, if you know?

A. Why about one half of one per cent.

Q. In other words, about 99½ per cent of them would never be switched across the crossings at all?

A. No, sir.

Q. How are your yards in McGehee located as to crossings?

A. It is located without crossings, the switching yard, the train yard.

Q. That is the private yards?

A. Yes, sir.

Q. Then you cross the crossings there with a switch engine for what purpose?

309 A. Only to reach the team track.

Q. Have you any industries there you switch to?

A. We have, but there are no crossings.

Recross-examination.

By Mr. Jones:

Q. You say you haven't been a switchman since 1904, Mr. Shea?

A. No, sir.

Q. What capacity cars on an average did you use at that time?

A. From forty to one hundred thousand.

Q. The average capacity of cars is considerably higher at the present time than it was in 1904, is it not, Mr. Shea?

A. The general average perhaps is higher.

Q. As to the average of increase of business since 1904?

A. About I should say 25 per cent.

Q. That is there is 25 per cent more business now on the average than there was in 1904?

A. Generally speaking throughout the country.

Q. Now did you ever switch cars in Arkansas?

A. I did not.

Q. Where were you switchman, Mr. Shea?

A. At Chicago, Champaign, and Jacksonville, Florida.

Q. Where did you act as Yard Master, any place else besides Jacksonville?

A. No, sir.

Q. What positions have you held in Arkansas that gives you a knowledge of the switching conditions in Arkansas?

310 A. Train Master, Superintendent.

Q. Where did you act as Train Master?

A. At Little Rock.

Q. How long were you a Train Master there?

A. About three years.

Q. When you were Train Master at Little Rock who was directly under you?

A. The yard force at Hot Springs, Gurdon, Hope.

Q. Well did you have a yard master at Little Rock at that time?

A. We did, but that was not under my jurisdiction.

Q. The Yard Master is the man directly over the switching operations is he not?

A. Yes.

Q. And the switchmen look to the Yard Master and the Yard Master looks to you for instructions?

A. He did.

Q. Now you stated I believe that there was about one half of one per cent of the cars switched across public crossings in McGehee; on what do you base that conclusion?

A. My familiarity with the business handled at that point.

Q. Well do you know of the exact movements of these various cars from the time they strike McGehee until they reach the final point of their destination in McGehee?

A. I certainly do.

Q. Do you know how many times each car moves around the yards and crosses the crossings at McGehee before it reaches
311 the point where it is supposed to lay?

A. The only time it reaches the crossing is when it is taken to the spotting point.

Q. As a matter of fact, Mr. Shea, as a switchman the cars when they reach the yard and are switched around the yard, they are switched around considerable, each separate car, are they not, before it finally reaches its point of destination?

A. Not necessarily.

Q. It is often the case, is it not?

A. In obscure cases many of them are mis-handled there.

Q. Isn't it a fact that is done practically every day?

A. I shouldn't say it is, no.

Q. It is often done is it not?

A. Possibly so.

Q. Then you cannot base the movements of the car or times cars are moved by the numbers of cars that reach certain points?

A. I refer to the necessity.

Q. I am asking you if they do?

A. No.

Q. You can not base that on the number of cars that reaches any certain city?

A. Well I am speaking about McGehee.

Q. Well McGehee?

A. I say one half of one per cent is the average number of cars that cross a crossing in switch movements at McGehee.

312 Q. You are basing that on how you think they should move the cars are you not?

A. No, how they actually move them.

Q. Do you know how many times they move each separate car before they finally spot it?

A. How many times they move the car?

Q. Yes, sir.

A. They should move the car twice, but that is not across a crossing.

Q. They move it around considerably in the yards there do they not?

A. Not necessarily.

Q. They often do it do they not?

A. No, sir.

Q. How do you know that, Mr. Shea?

A. By observation.

Q. How much time do you spend in the McGehee yard among the switchmen?

A. About I should say an hour a day four days a week.

Q. Where are you located at present?

A. At McGehee, in the center of the yards.

Q. Have you a Yard Master under you at McGehee?

A. I have.

Q. Now I believe you said that there is no crossings in the yards of McGehee?

A. No, sir.

Q. Now the main line passes over a crossing there, does it not?

313 A. It passes over two.

Q. The industrial tracks, what about them?

A. No crossings.

Witness excused.

314

Testimony of D. T. Wachter.

D. T. WACHTER, being first duly sworn, and being called by the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. D. T. Wachter.

Q. Where do you live?

A. Little Rock.

Q. What is your business?

A. Terminal Train Master for the St. Louis, Iron Mountain & Southern Railroad at Little Rock.

Q. As Terminal Train Master what yards do you have charge of?

A. I have charge of the Argenta and Little Rock yards.

Q. How much experience have you had as a railroad man?

A. Twenty years.

Q. In what capacity, what positions?

A. Clerk in local freight office, switchman, engine foreman, Assistant Yard Master, night Yard Master, General Yard Master, Terminal Train Master, and Division Train Master.

Q. Now as Terminal Train Master what do you have to do with the switching or switchmen?

A. I have supervision of all the work within the yard limit in the Terminals.

Q. Are you familiar as to how the switching is done in Argenta and Little Rock?

A. I am.

315 Q. How long have you been terminal train master there?

A. Eighteen months.

Q. You were there as Terminal Train Master before the law went into effect requiring the additional man?

A. I was.

Q. I will ask you if the law requiring the three helpers, the additional train man, has added anything to the efficiency of the train crews or to the safety at public crossings?

A. It has not.

Q. Does the third man provide any additional safety at public crossings?

A. It does not.

Q. I will ask you, with the exception of three or four engines probably at work in the long yards where there are no crossings as I understand, does the additional man add anything to the efficiency of the — in any respect?

A. No, sir.

Q. In comparison to the amount of work before the man was put on and since, how does that stand?

A. It compares just about even.

Q. In comparison to the amount of safety, how does it stand?

A. It doesn't add anything to the safety at all.

Q. The question has been asked here, if a foreman and two helpers could handle with safety a train of 50 or 60 cars being pushed from Argenta to the Little Rock yards. Are cars pushed in front of an engine with a train of cars that way?

A. They are not.

316 Q. State how they are handled?

A. Cuts of cars of that length are pulled from Argenta to East Little Rock or v-ce-versa.

Q. Back the other way?

A. Yes, sir.

Q. Suppose that they were pushing in that way, in going on to the sharp curve on the south side of the River could an additional man help protect it in any way?

A. We wouldn't permit them to be pushed that way.

Q. You wouldn't permit it at all?

A. That number of cars.

Q. About kicking cars across a crossing, I will ask you whether or not that is a custom or whether or not that is permitted?

A. Kicking cars over the crossing?

Q. Yes?

A. No, sir.

Q. Do you ever have a switching performance where you have a train of cars behind an engine and a train of cars in front of it and kick them both ways?

A. We do not.

Q. If you did have, how would you do? Suppose you had your engine in the middle of a lot of cars, some at one end and some at the other, how would you do?

A. We would shove the cars up and cut those off from the end of the engine we were not classifying, leave them stand there and handle those on the other end of the engine.

317 Cross-examination.

By Mr. Jackson:

Q. Mr. Wachter, are you an official of the Iron Mountain Railroad?

A. I am.

Q. As an official of the Iron Mountain Railroad do you know at any time of any cars having been kicked across public crossings?

A. No, sir.

Q. You don't know?

A. No sir, I haven't personally witnessed anything of that kind.

Q. Isn't it a fact, Mr. Wachter, that they do it daily right in front of your office?

A. No, sir.

Q. It isn't?

A. It is not.

Q. Do you know whether they drop any cars around across public crossings in Argenta or not?

A. Not in Argenta.

Q. Do they ever drop any cars from out of the Smith yard down across the 9th Street crossing and into what is known as the caboose track there next to the A. C. O. tracks?

A. We have a little short Y or little pocket there, in other words, that we use to run around a car or two at any time you want to change ends.

Q. I am asking you if you don't drop those cars, hasn't it been the practice up until you discontinued the track of the A. C. O. to drop cabooses into the A. C. O. track?

318 O. to drop cabooses into the A. C. O. track?

A. No sir, we positively did not.

Q. Those tracks I have just been talking about, don't they run across a public crossing there at 9th Street or 8th Street?

A. They do.

Q. You don't know anything about them dropping some cars there about a year and a half ago and hitting a boy on a bicycle?

A. No sir, I know nothing of their dropping the cars or the boy being injured on the bicycle.

Q. Did you ever have any arguments with your son about dropping cars?

A. I have about dropping cars, but not over public crossings.

Q. Do you ever tell your switchmen to drop cars?

A. Well I think I have whenever it was absolutely necessary, not over crossings.

Q. How many tracks are there in Little Rock and Argenta you cannot get cars by only dropping them over public crossings?

A. You may say there is none.

Q. What about Rock Street?

A. It is not absolutely necessary to drop cars there.

Q. Mr. Wachter, isn't it a fact you know that they do drop cars there daily, a number of times daily, at Rock Street?

319 A. Yes, sir.

Q. Right over the Rock Street crossing where there is two hundred and fifty or three hundred teams cross there daily?

A. I never counted up the number of teams passing over the crossing. That is one of the places that occasionally arises where they drop cars, but not until they have made all arrangements for the safe handling of those and notifying the crossing watchman that such is going to be done, and obtaining their acknowledgement that everything is all-right.

Q. Speaking about shoving cars, do you ever have your switchmen shove cars around from the Fort Smith yard into the Mountain yard over the 10th Street crossing?

A. We do.

Q. And over Third street crossing?

A. We do.

Q. How far can you see a signal around that curve?

A. Oh some eight car lengths.

Q. How many cars do you generally shove around that cut?

A. We shove from one to twenty-five.

Q. Don't you ever shove more than twenty-five?

A. Rarely ever, if ever. That is about the capacity of the track, and trains are shoved around when they are full or even before they are full.

Q. What about track number 9; do you ever shove them up into Smith yard through three right over the crossing?

A. We have when the track contained only a very few

320 cars.

Q. Isn't it a fact that you have shoved them around there when it was nearly full of cars?

A. No, sir.

Q. Never do?

A. No, sir.

Q. Hasn't the representative of the organization representing the yard men come and asked you to be relieved of that dangerous practice of shoving cars around there in day time and night?

A. They have not.

Q. Then any records here produced wouldn't be correct to that effect?

A. Well it depends on what kind of records they are.

Q. Testimony showing that a request had been made of you?

A. To shove the whole track around there; nothing of the kind.

Q. To shove the trains around from Smith yards over this?

A. Certainly we shove them around there.

Q. Haven't you been requested by the representatives of the yard men to discontinue those practices?

A. I don't recall anything of the kind.

Q. Do you ever drop any on to the stock track into Argenta?

A. No, sir.

Q. Do you ever kick any cars across any of the crossings in Argenta?

A. None that I remember of.

Q. What about 9th Street in the Fort Smith yard; isn't it a fact you kick about a thousand cars across that crossing every
321 day?

A. No sir, the engine foreman stations somebody on the crossing.

Q. I am asking you don't you continually kick cars across that crossing, about one thousand cars a day?

A. Don't kick them across there. We cover the crossing and then the cars are cut off. Kicking a car over the crossing is when the car is uncoupled from the rest of them, and not when the engine is shoving them over the crossing.

Q. Don't you kick cars over crossings on that yard?

A. Not in Argenta that I know anything about.

Q. When you are switching stock and the track is over the crossing, and you are switching from the main lines, don't you kick cars across the Main Street crossing?

A. The crossing is covered before the cars are cut off.

Q. You kick them though don't you?

A. The cars cover the crossing before they are cut off.

Q. Don't you kick them across the Main Street crossing?

A. If the crossing has been once covered then the cars are uncoupled.

Q. The crossing then is protected by a member of the switch crew isn't it? Is the crossing protected by a member of the switching crew when there is switching across that crossing?

A. Main Street crossing?

Q. Yes sir. When they are switching off the main line on the tracks over the crossing, isn't that track covered, that crossing covered and protected by a member of that switching
322 crew?

A. I don't understand what you mean.

Q. You know where the crossings are, over the crossings when they pull a cut of cars out and go to switch them into the tracks, they back over the crossings there switching cars across Main Street don't they?

A. They don't do any switching in that direction.

Q. The crossing is covered by what?

A. By the cars.

Q. And what; isn't it a fact a member of the switching crew stands near that crossing when the switching is done?

A. Since when?

Q. At all times?

A. I don't know anything about it.

Q. When you go to kick a car over the crossing, isn't it the rule of the Company and the requirements for them to protect that crossing with one of the switchmen?

A. It is a rule of the Company not to kick any cars over the crossing.

Q. But they do it daily don't they in Argenta?

A. I never saw them kick them over the crossing.

Q. Don't you know that it is done?

A. No, I don't know that it is done.

Q. Don't you know that cars are jerked across that crossing?

A. No, sir.

323 Q. What did you mean then when you said before you could kick a car you sent a member of the switching crew up to the crossing?

A. I didn't make that statement.

Q. How many tracks, Mr. Wachter, is there crosses Main Street in Argenta?

A. In which direction do you mean; in the Fort Smith yard or main yard?

Q. Well the Main yard first?

A. Four there in the Main yard.

Q. Across Main street?

A. Including the short Y leading from the main line or the Fort Smith main line.

Q. What is known as the hold engine works almost continually over that Main Street crossing all day does it not?

A. Yes.

Q. How many tracks across from what is known as the rip lead over to the whole lead in front of the passenger depot in Argenta?

A. How many tracks where?

Q. How many tracks between the rip lead that goes up in front of your office and the whole lead?

A. Four.

Q. Isn't there more than that, isn't there about eight?

A. Those that parallel each other and run directly opposite the office. You drop further down below the office of course then there is a larger number.

324 Q. Isn't there about eight across there from the passenger depot to the whole lead?

A. There comes the lead and the two main lines and the whole lead.

Q. How many tracks between the whole lead and the main line?

A. There is none between the whole lead and the main line.

Q. There isn't. How do you get number one, two, three and four in there?

A. That is the ladder down there; the lead is a straight track.

Q. Mr. Wachter, don't passengers who are coming to board your trains, aren't they continually passing between the passenger depot

and the alley lead right across the yards there, what you term an unknown crossing?

A. I don't know that the passengers cross there; some of the residents there on that side of the town occasionally pass that way making a short cut.

Q. Do you ever see any passengers cross there?

A. Very few of those.

Q. Up at Main Street under the viaduct at 10th Street, don't school children go under there daily three times a day from the Argenta High School to their homes?

A. There is a few pass there; that crossing is protected by a watchman.

Q. Do you ever have any of your yard men shove any cars over the Valley Bridge into East Little Rock from Argenta?

325 A. A few cars at a time.

Q. How many?

A. All the way from one to fifteen.

Q. Do you ever shove any more than that over there—fifteen?

A. Well might possibly sometimes, but ordinarily on a general average it will go about 6 or 7 cars.

Q. How many cars can you see going around the Valley bridge curve, a 26 degree curve I believe it has been stated here it is.

A. There is a space in there probably eight or nine car lengths that you cannot see anyone; after the man had passed around the curve then you could look around and see him easy.

Q. Then shoving the cars around the curve there would be unsafe, would you consider it that way?

A. I wouldn't consider it that way.

Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Wachter, this Valley bridge crossing he speaks of is that protected any way?

A. A flagman there day and night.

Q. Does he have a tower?

A. No, sir.

Q. It is protected at all times?

A. It is protected at all times.

Q. He spoke about over in Argenta at 9th Street. I will ask you if there is a viaduct at 9th Street. There is another viaduct over there on the other side of Main and I don't know what street
326 that is?

A. There is none at 9th Street.

Q. Is there a watchman there?

A. There is.

Q. Well 8th Street?

A. 8th Street is not open.

Q. Is there any street open after you pass 9th Street going north until you get a mile or two out of town?

A. Which do you call north?

Q. On the main line towards St. Louis?

A. Well there is Main Street crossing and then four block- further up there is another street crossing, then there is nothing more.

Recross-examination.

By Mr. Jackson:

Q. How many crossings are there out on the Fort Smith main line, going west on the Fort Smith line?

A. Well I believe there is only three.

Q. Are they protected by any flagman?

A. No, they are not protected.

Q. Those places where you have stated that they have flagmen, what time do these flagmen quit in the evening?

A. Well Main Street and Second Street is protected day and night.

Q. I am talking about in Argenta?

A. The flagmen come off duty at 6 o'clock in the afternoon.

Q. Then it is unprotected from that until the next morning?

A. From 6 o'clock in the afternoon until 7 o'clock the next morning.

327 Q. Except by the Switching crew; is that correct?

A. Yes.

Q. Is the flagman that is on these crossings, are they familiar with the operations of that switch engine? Take Rock Street flagman, and they are switching the team tracks, is that flagman familiar with each movement of that engine and the cars where they are going to be kicked on what tracks?

A. Perfectly familiar.

Q. How did he get familiar?

A. From experience.

Q. Does his experience with each cut of cars tell him where they are going; does he know the movement of every car and on what track they are going?

A. He does simply because he is standing over on the side of the car that the crew is working on and he keeps up with the switches as they are made and knows what switch they are going in on.

Q. Has he got a list of where each car is going to be switched?

A. He has not.

Q. If the Valley train is pulling around on the Valley bridge, about 75 or 100 cars, and this flagman is caught behind his shanty and you got other trains and the switchmen are doing the switching over across Rock Street and on the team tracks, then he cannot get over there to protect those crossings can he?

A. But he wouldn't be caught over on that side of the track, he would be over on the other side.

328 Q. Did you ever see him on that side of the track?

A. I have not.

Q. Then you haven't been over there much have you?

A. Yes, I have.

Q. You never saw your flagman then caught away from the tracks?

A. He is always around on the other side of the track and he signals those trains and switch engines over the crossing.

Q. Isn't he a kind of messenger boy for the Yard Master, takes telephone messages?

A. He answers the phone when it rings, but he doesn't do that to any extent that would interfere in the least with protecting the crossing.

Q. Who is protecting the crossing while he is answering that telephone?

A. He doesn't answer the telephone while the engine is switching over the crossing.

Q. Do the switchmen at Rock Creek ever kick any cars over that crossing?

A. Not to my knowledge.

Q. Have you ever been over there when that engine crew or switching crew rather was switching across that crossing?

A. Yes, I have.

Q. And you state to your knowledge you never saw them kicking cars across that crossing?

A. I don't think I have ever noticed it directly of them kicking cars across that crossing.

Witness excused.

329

Testimony of W. J. McVan.

W. J. McVAN, being first duly sworn, and being called by the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. W. J. McVan.

Q. Where do you live?

A. Little Rock.

Q. What is your business?

A. Yard Master.

Q. How long have you been Yard Master there

A. About fifteen months.

Q. What experience have you had in the railroad business?

A. About eighteen years as Yard Master.

Q. What other experience have you had?

A. Check cars, run baggage, broke, run train.

Q. Act as foreman?

A. Yes sir; conductor, switchman, engine foreman and Yard Master.

Q. You have acted as switchman?

A. Yes, sir.

Q. Now as Yard Master does your jurisdiction extend over all of the yard in Argenta and Little Rock?

A. Yes sir, it is supposed to.

Q. Are the switching crews under you?

A. Yes, sir.

Q. The law now requires you to equip your switch engines with a foreman and three helpers; prior to that I understand you had two helpers on most of your engines?

330 A. Yes, sir.

Q. I want to ask you if the additional man is any protection to the public at public crossings in switching cars?

A. No, not any more than it was.

Q. That is the switching crew composed of one foreman and two switchmen can switch the cars just as safe across the crossings as having the third man.

A. Yes, sir.

Q. Do they do any more work ordinarily?

A. They do on the leads, yes sir.

Q. Well you had on those leads the third man anyway didn't you?

A. On one engine was all in the day time.

Q. How many engines work on the leads?

A. We have got three lead engines in Argenta.

Q. Leaving out those—those that do the work, the ordinary switching over town you say you do the same work with the same safety with two men as you can with the three?

A. Yes, sir.

Cross-examination.

By Mr. Jones:

Q. How long has it been since you actually done any switching, Mr. McVan?

A. About three or four years.

Q. You have seen them drop cars in Argenta yards have you not, Mr. McVan?

331 A. Yes, I have seen them drop one car with a man on it, a man ahead of it.

Q. They do that quite often don't they Mr. McVan?

A. Not very.

Q. Now, Mr. McVan, aren't there places in Little Rock and Argenta yards where you cannot get a car in any other way?

A. No.

Q. There are places in Argenta yards and Little Rock yards are there not where if you do the work any way besides dropping the car it would take up two or three or five minutes' extra time?

A. No, sir; we have got pockets in Argenta where we can run around cars.

Q. You have seen them kick cars across into Argenta yards have you not?

A. I don't consider kicking cars the way you do; shove them over the crossing and then cut the cars off afterwards.

Q. When you operate on the crossing, Mr. McVan, what protection do the switchmen render the public at the crossings, if any?

A. Why it is a rule for a man to stay there; that is his position, that is where he belongs.

Q. One of the switchmen would be at the crossings when the operation is over the crossings would he not?

A. Certainly; that is always done, sometimes there is two men.

Q. You say that an engine or the switch engine crew operating on the lead would need a third man would it?

A. A long lead, yes sir.

Q. Isn't it a fact, Mr. McVan, that the engines have no designated place to work and that one engine will take various parts of the yard?

A. Oh yes, we have bum engines that go all over the yard.

Q. The switch engine crews and the switch engines, they switch about to the various parts of the yard do they not?

A. Oh yes.

Q. Now what you call a bum engine that often switches on the lead itself does it not?

A. Yes, it does some switching.

Q. Now the crossing at Main Street in Argenta, Mr. McVan, there is several school children pass across that crossing every day is there not?

A. There is some, yes; the majority of them go over the viaduct though.

Q. There is considerable traffic over the Main Street there in Argenta is there not?

A. Yes, sir.

Q. The viaduct that passes over the Main Street in Argenta, that is out of repair a good deal of the time isn't it?

A. It has been constructed since I have been there.

Q. How long was it out of repair while it was re-constructed?

A. I couldn't say, about two or three weeks.

Q. The viaduct was blocked for a considerable length of time here a short time back?

333 A. For street cars, yes.

Q. Did you ever see a cut of cars pushed across the tracks there, Mr. McVan?

A. How do you mean?

Q. Well the engine behind the cars and the cars going first?

A. Oh, yes.

Q. There are places across over there where the track is very curved is there not?

A. Yes.

Q. And the tracks run closely parallel to each other?

A. Yes.

Q. You have cuts of cars set out on these various tracks a good part of the time do you not?

A. What do you mean by set out on the tracks?

Q. I believe you call it spotted on the track?

A. We don't leave any cars on any leads you know.

Q. Well the various tracks run off from the track known as the lead do they not?

A. The lead is the ladder track and runs off from the leader, yes sir.

Q. They switch up and down the various tracks from the lead as well as the lead do they not?

A. One lead at one time.

Q. I mean, Mr. Van, a switch engine often operates down these various tracks running off a lead does it not?

A. Oh yes.

Q. Now the tracks running off the lead they run parallel do they not?

334 A. They don't run parallel; they come off the lead as a ladder.

Q. And there is cuts of cars set out on various tracks running off the lead?

A. I don't understand.

Q. You often have long strings of cars set out in the yard somewhere do you not?

A. If we want to take them out and store them we do, yes.

Q. And switch engines operate in and around these cars?

A. Sure; all trains for the main line we have we have got to go up and down the main line to get to them.

Q. I believe you say you had several curves in Argenta?

A. We have some yes.

Q. What is the degree of curve around the Arkansas Cotton Oil Mill there, Mr. McVan?

A. I couldn't say exactly; I am not a brakeman.

Q. That is a very severe curve is it not?

A. A good size curve, yes.

Q. And there is a building there that obstructs the view?

A. A little ways, yes sir.

Q. What distance, Mr. McVan, can one man see another or see signals from another going around that curve?

A. About six or eight car lengths. Then there is a place you can see through you know from the end of the cars over to 9th Street; they always watch there.

Q. Did you ever see cars shoved?

A. From Argenta?

Q. Yes?

335 A. No sir, except might shove a few cars from Argenta to Fort Smith crossing.

Q. Did you ever see a car shoved out of number 6 track?

A. Not from Argenta, no sir; number 6 track from Argenta to the Iron Mountain yard, but not to the Fort Smith yard.

Q. Let me understand you. You have seen them shoved across from number 6 yard where to where?

A. Out of the Fort Smith yard to the Iron Mountain yard.

Q. Passing from one of those yards to the other you have seen them shoved across from the Fort Smith yard to the Argenta yard?

A. Oh yes.

Q. Did you ever see them drop cars from number 9 track in Argenta?

A. Once or twice a few cars.

Q. Mr. McVan, isn't it a fact that you don't operate a yard and do the switching in a yard and maintain all the rules that are laid down in the rule book?

A. Maintain all of the rules?

Q. Yes, sir.

A. In what way do you mean?

Q. Well, isn't it a fact that cars are pushed and cars are kicked and cars are shoved every day in those Argenta yards?

A. Yes, but we have a man on the rear of them you know, always did; that is ruleable all over the country to have a man on the end of the cars when you shove them.

Q. Whenever you do anything like that you have one of the switchmen to protect them?

336 A. Certainly that is a ruleable for years.

Redirect examination.

By Mr. Kinsworthy:

Q. You had this man to protect the crossing before you had the third man didn't you?

A. Oh yes.

Q. Had plenty of men to do it without him?

A. Certainly; the man following the engine; it is his duty to protect the crossing at Main Street. We have always done that.

Q. Now will you explain to the Court—you said a little while ago there was a difference between kicking a car across the crossing and shoving it across the crossing and then cutting it off?

A. I mean we simply shove over the crossing and then cut the cars afterwards, after we have got the crossing protected; the cars have got the crossing protected.

Q. But you don't cut the car off and let it roll across the crossing?

Mr. Jones: I object as leading.

The Court: Yes, that is too leading.

Q. Will you explain to the Court the difference between kicking a car and shoving a car and then cutting it off in the ordinary switching?

A. When you are shoving the car the engine has got hold of it. After you cut it off you clear it; to kick it of course you have to kick it with the engine and then pull the pin.

337 Recross-examination.

By Mr. Jones:

Q. Mr. McVan, as Yard Master is the engine foreman supposed to keep in touch with you as to orders?

A. Oh yes.

Q. And he often receives his orders by phone does he not?

A. Sometimes, yes.

Q. And frequently comes over to see you regarding orders?

A. Oh yes, very frequently.

Witness excused.

338

Testimony of M. F. Weeks.

M. F. WEEKS, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. M. F. Weeks.

Q. Where do you live, Mr. Weeks?

A. Monroe.

Q. What is your business?

A. Yard Master for the Iron Mountain.

Q. What experience have you had in the railroad business?

A. About eight or nine years. I have served as switchman, engine foreman, Assistant Yard Master, and General Yard Master.

Q. Where were you switchman?

A. In Alexandria, McGehee and Pine Bluff.

Q. Where were you Yard Master?

A. I was Yard Master at Pine Bluff, McGehee and Monroe.

Q. Were you ever foreman of the engine?

A. Yes, sir.

Q. Whereabouts?

A. Pine Bluff, McGehee and Alexandria.

Q. How long has it been since you were at Pine Bluff?

A. Two years and eight months.

Q. How long has it been since you were at McGehee?

A. About four years I think; I am not sure about the dates.

Q. You are familiar with the yards at Pine Bluff?

A. Yes, sir.

Q. And at McGehee?

A. Yes, sir.

339 Q. And at Monroe and Alexandria?

A. At Monroe and Alexandria, yes sir.

Q. As to grades and the manner of doing the switching, is there any difference in the way it is done in Louisiana and Arkansas in those towns you speak of?

A. No, sir.

Q. Now when you were at McGehee and Pine Bluff doing the switching, what did your crew consist of?

A. A foreman and two helpers.

Q. Did you need a third helper for the purpose of safety or efficiency to do the work?

A. I cannot see it that way; I cannot see that I did, no sir.

Q. Could you have done your work any safer with the third man?

A. I don't think so, no sir.

Q. Are you still switching in Louisiana?

A. No sir, I am Yard Master at Monroe.

Q. You have charge of the switching there?

A. Yes, sir.

Q. At this time how many helpers do you have there?

A. A foreman and two helpers.

Q. How does the work compare in Monroe and Alexandria with McGehee and Pine Bluff?

A. About the same; I cannot see the difference.

Q. With Pine Bluff as to the amount I mean?

A. The switching is about the same in Monroe as it is in Pine Bluff.

Q. Do you need an additional man in Monroe?

340 A. No, sir.

Cross-examination.

By Mr. Jackson:

Q. Mr. Weeks, for what Company did you work at Pine Bluff?

A. The Cotton Belt.

Q. What engine did you work there?

A. I work- the north lead or south lead and the bum engine.

Q. In handling the bum engine what class of work did you perform in Pine Bluff?

A. Well in the evening I did a little City work and at night I did other work.

Q. What is the condition of the tracks at Pine Bluff; are they straight or curved?

A. What tracks do you mean?

Q. I mean down in the City where they do the industrial work?

A. They are mostly straight.

Q. Is there any curved tracks down there?

A. The turn off is a little curved; I believe there is one curved track in Pine Bluff. I don't know what track they call it now; it goes down to the old Elevator.

Q. Those tracks in Pine Bluff, are they in such a position you can see the signals at all times with those blind crossings?

A. Yes, sir; with the number of cars they handle.

Q. That is when you were there?

A. Yes, sir.

Q. You don't know anything about the conditions at Pine Bluff now?

341 A. No sir, I do not.

Q. Did you ever see the time in Pine Bluff when you could have used the third helper with advantage in protecting your switching at Pine Bluff?

A. I have seen the time when I could use a man to advantage on the lead but at no other time. I could use a man on a long lead to advantage, but at no other time.

Q. Did you ever hear of any accidents happening at Pine Bluff?

A. No, none that I know of.

Q. You say you needed a man on the lead?

A. Yes, we could use a man on the long lead.

Q. How long has it been since you have been a switchman?

A. A little over three years.

Q. You use to switch at Alexandria didn't you?

A. Yes.

Q. How long has it been since you switched in Arkansas?

A. It has been about three years; the last switching I done was for the Cotton Belt.

Q. Since you have got to be switchman for the Iron Mountain Railroad you have had a kind of a change of heart on this third man?

A. Not, necessarily, no.

Q. Did you ever have a conversation with the representative of the organization as to the number of men that could properly operate a switching crew?

A. I have not.

342 By the Court:

Q. You stated a while ago that you needed a man occasionally on the long lead. I am not up on such expressions; explain to me in plain English just what you mean by the long lead.

A. What I mean by that is the lead in a train yard.

Q. What is a lead?

A. A lead is the track that the ladder track leads off of. It is a straight line with the ladder track leading off from. When I said a lead I meant lead in the train yard and not on the industrial track, because you don't switch cars on a lead on the train yard like you do in the industrial track.

Redirect examination.

By Mr. Kinsworthy:

Q. Now, Mr. Weeks, in using this third man on the lead would you be using him where you could going across a public crossing?

A. No sir, you would be using him in keeping from breaking up the equipment and in doing the work. I didn't intend that to be on any crossing at all; I mean that for a train yard lead.

Q. In other words you could do more work if you had the third man?

A. Yes, sir.

Mr. Jones: We object to that as leading.

The Court: The question is leading.

Mr. Jones: We ask that that question be stricken out for that reason.

343 The Court: The question and answer will be excluded.

Q. Does the lead at Pine Bluff you are speaking of have a public crossing across it?

A. No, sir.

Witness excused.

344

Testimony of H. B. Bray.

H. B. BRAY, of lawful age, being duly sworn and examined as a witness on the part of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. H. B. Bray.

Q. Where do you live, Mr. Bray?

A. Memphis.

Q. What is your business?

A. Yard Master.

Q. For what road?

A. Rock Island.

Q. At what point?

A. Memphis.

Q. Have you under your supervision any yards in Arkansas?

A. Hulbert.

Mr. Jones: Before any questions are asked we are going to object to any testimony being introduced about the operation of trains or switching crews at Hulbert.

The Court: I don't know anything about Hulbert.

Mr. Kinsworthy: I am not going to ask him about Hulbert.

By Mr. Kinsworthy:

Q. In what capacity have you acted in railroad business?

A. Brakeman, Conductor, Engine Foreman and Yard Master.

Q. Did you ever do any switching?

A. Yes, sir.

Q. Then you have acted as switchman?

A. Yes, sir.

345 Q. How long were you switchman and when did you act last?

A. In 1904.

Q. What position on the switch engine did you handle?

A. I followed the engine and also was helper.

Q. Now in Memphis, you say you are Yard Master there?

A. Yes, sir.

Q. How many helpers do you have with the switch crew there?

A. Two.

Q. What are your switching crews composed of?

A. A foreman and two helpers.

Q. As to going across crossings, do you have to go across crossings in switching?

A. Many of them.

Q. Is the switching in Memphis any different than in Arkansas, or is it similar?

A. Somewhat similar.

Q. Is there any difference in any particular or any respect?

A. It is more hazardous perhaps in my territory.

Q. In Memphis?

A. Yes, sir.

Q. You say your crew there consists of an engineer, a fireman, a foreman and two helpers?

A. Yes, sir.

Q. As a matter of safety in going across crossings, would the third man, in your experience, give you any better protection of the public, or any better protection at all?

A. It would not, for the reason we handle very short cuts.

346 Q. Across crossings?

A. Yes, sir.

Q. What is the number of cars—or do you know the number of cars you handle a day with an engine, for the Rock Island?

A. An average of 75 cars.

Q. How many engines work there?

A. Three.

Q. You switch passenger trains over there?

A. No passenger trains.

Q. All freight?

A. Yes, sir.

Q. Did you ever have charge of the yards at Little Rock?

A. Yes, sir, I had charge of the Little Rock yards for about three years.

Q. For what company?

A. Rock Island.

Q. When?

A. From September, 1909, to February, 1912.

Q. Of what did your crew consist? your switching crew?

A. Foreman and two helpers, engineer and fireman.

Q. I will ask you whether in your judgment a third man would have been any benefit to you in Little Rock, as to the protection of the public at crossings?

A. In my opinion, no, sir.

Q. Would it have been any benefit in the amount of work you would do?

A. Well, we frequently use the fourth man to help out on our work.

347 Q. In particular circumstances?

A. Yes, sir.

Q. In what respect; state what it was?

A. For instance, in Little Rock City yards we had a condition there where the cars would roll back upon the lead; in that case we usually worked the fourth man, especially at night.

Q. For what purpose?

A. To prevent the cars rolling back and resulting in cornering the cars that had been put in on another track.

Q. That was for the purpose of doing more work, or of getting more work done?

A. It was, by reason that the cars would have to have been shoved out before the other cars could be moved in.

Q. It don't increase the safety at all?

Mr. Jones: We object to that.

The Court: The objection is sustained.

Mr. Kinsworthy: I save my exceptions.

By Mr. Kinsworthy:

Q. Would a third man increase the safety?

Mr. Jones: I object to that.

The Court: The objection is sustained.

Mr. Kinsworthy: I save my exceptions.

Cross-examination.

By Mr. Jones:

Q. What do you mean by "cornering" cars?

348 A. If a car was moving down a lead past a track on which other cars may be rolling towards it, moving in the opposite direction, it would be caught between before it could pass in the clear.

Q. If it did it would strike one car by another?

A. Yes, sir, that is it.

Q. You used four men at Little Rock so as to prevent one car rolling back on the lead and striking another car?

A. Yes, sir.

Q. I believe you stated it was more dangerous to switch cars at Memphis than it was in the Arkansas cities; is that because they switch more cars at Memphis?

A. No; I judge it is on account of the location of the different places where they work.

Q. Various switching yards, Mr. Bray,—the conditions at one place wouldn't apply to another, on account of these conditions that you speak of?

A. Well, no; as a rule, no.

Q. There is a difference in switching yards on account of the geographical location, or on account of the elevation in the yards, or curves in the yards; isn't that so?

A. These conditions enter into the scheme, yes, sir.

Q. Well, it requires more men to do switching when you have a lot of business at one place than it does at another, doesn't it?

A. Naturally so.

Q. On account of the increased amount of business it takes
349 more help to do the business at one place than it does at another?

A. Certainly.

Q. If you have a certain amount of work to do at a certain place, it would be owing to the amount of business brought into that certain town?

A. Yes, sir.

Q. Don't you think, Mr. Bray, if you had an increase of business on account of a fair, or otherwise, where more cars were brought in to be switched and put an extra burden on the switchman at that particular time, you would need the third man?

Mr. Kinsworthy: I want to object to that testimony. This law applies generally; this is a general law all over the State, and the testimony shows that if they need a third man on a special occasion they would put him on.

Mr. Jones: I want to show in a case of emergency.

Mr. Kinsworthy: I object.

The Court: The objection will be overruled.

Mr. Kinsworthy: I save my exceptions.

By Mr. Jones:

Q. Answer the question?

(Question read.)

A. It would depend altogether on the amount of business there was to be handled at the place that required this increase.

Mr. Kinsworthy: I except to that answer.

By Mr. Jones:

350 Q. That would depend on the amount of business brought in on the special occasion.

Mr. Kinsworthy: I save my exceptions to that testimony.

By Mr. Jones:

Q. Did you ever act as switchman in Arkansas?

A. I did not.

Q. Are you familiar with the various yards in Arkansas, Mr. Bray, except the Rock Island yards in Little Rock?

A. No, I have no acquaintance with any yards except the Little Rock yards.

Q. You had an accident at a street crossing in Memphis by one car knocking into a street car?

A. No, that was another line.

Q. There was an accident by a freight car running into a street car?

A. Yes.

Q. That car was operated by a switch engine, a foreman and two helpers, was it not?

A. It was.

Q. You are rated as an Official of the Rock Island, are you not?

A. I presume so.

Q. You ride on a pass as an Official?

A. Yes, sir.

Mr. Kinsworthy: What does that have to do with it?

Mr. Jones: That is all.

185

Redirect examination.

By Mr. Kinsworthy:

Q. You stated if the work should increase or get heavy at
351 any place, you might need the third man. Would the third
man have anything to do with the safety at public crossings?

A. I should think not. I have never seen it that way.

Q. In doing the work would he have anything to do about protecting the crossings any more than if you only had two?

A. No.

By Mr. Jones:

Q. A man is placed over the crossing when the car is moved up and down and around over a crossing, is he not?

A. He is placed on the lead car or the vicinity of the lead car.

Witness excused.

352

Testimony of M. O. Gay.

M. O. GAY, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. M. O. Gay.

Q. Where do you live, Mr. Gay?

A. At Little Rock.

Q. What is your business?

A. At the present time I am General Agent in charge of the transportation matters of the Little Rock Terminal.

Q. As such General Agent in charge of transportation matters, does that compare with the——

A. The same as Terminal Train Master on other lines.

Q. As General Agent, what do you have charge of, who is under you?

A. Everybody in the transportation department and the operating department; the switchmen, Yard Masters, and the Agents, train men in that territory.

Q. What experience have you had, Mr. Gay, as a railroad man?

A. About 27 years.

Q. What positions?

A. Section laborer, Telegraph Operator, Agent, had charge of Terminals; Train Master on four or five different Divisions and four or five different States.

Q. How long have you been holding the position you have
353 now at Little Rock?

A. Just about one month; previous to that I was Train Master between Little Rock and Memphis.

Q. Headquarters at Little Rock?

A. Yes, sir.

Q. Are you familiar with the manner in which switching is done?

A. Yes sir; I have had charge of switchmen for fifteen years or more.

Q. I will ask you in your judgment with your experience, if an engineer and a fireman, a foreman, and two helpers are all that is needed to handle switch engines?

A. It certainly is.

Q. As to the matter of safety at public crossings, does the third man add anything to it?

A. I have never been able to see it where he did, no sir. I have never felt the need of it.

Q. Would you ever need the third man as to the matter of protecting crossings for safety at crossings?

A. Never felt I needed it.

Cross-examination.

By Mr. Jones:

Q. What road are you General Agent for, Mr. Gay?

A. The Rock Island railroad.

Q. You are an Official with the Road?

A. Yes, sir.

Q. Did you ever switch a box car?

354 A. Yes, sir.

Q. Where did you switch, Mr. Gay?

A. Not as a regular switchman, but I have done everything that was ever done in the transportation department.

Q. Have you ever been employed as a switchman?

A. Not as a switchman, but I have done switching, engine foreman and a switchman in my duties from time to time when an emergency arose or I felt like it.

Q. At what places?

A. Council Bluffs, Iowa; Omaha, Nebraska; St. Joe; Leavenworth and Atchison; Fort Worth, Texas; Hurlbut and Memphis.

Q. What portion of that time you speak of did you act as switchman?

A. Very little of the time.

Q. Now as Train Master, Mr. Gay, who was directly under you?

A. The Train Master has jurisdiction over the train men, the Yard Masters, the yard men indirectly; the Agents and operators, and Dispatchers.

Q. Who has direct supervision of the switchmen?

A. The Yard Master.

Q. Who is next over the Yard Master?

A. The Train Master. At Little Rock it is the General Agent at the present time of the Rock Island.

355 Q. Did you ever see a car kicked over a public crossing?

A. Did I ever see a car kicked over a public crossing?

Q. Yes, sir.

A. I cannot remember now. I have seen everything irregular done, and it has been a part of my duties for a great many years to just keep those irregularities down.

Q. Did you ever see a car dropped over a public crossing?

A. I cannot remember now of ever seeing a car dropped over a public crossing.

Q. Did you ever see a cut of cars pushed over a public crossing?

A. Yes, sir.

Witness excused.

356

Testimony of H. C. Lerew.

H. C. LEREW, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. H. C. Lerew.

Q. Where do you live, Mr. Lerew?

A. Pine Bluff.

Q. What is your business?

A. Yard Master of the Cotton Belt.

Q. What experience have you had as a railroad man?

A. About 35 years.

Q. During that 35 years, Mr. Lerew, what various duties have you performed?

A. Foreman switchman, conductor, Yard Master, Superintendent, Train Master.

Q. Now as Yard Master for the Cotton Belt at Pine Bluff, who comes under your jurisdiction, under your control?

A. All of the switchmen.

Q. How many switch engines do you operate there?

A. Five usually, sometimes six.

Q. As to your yards, can you tell me how many crossings there are in your main yards?

A. In the main yard we haven't any.

Q. What per cent of your switching is done there in the main yards?

A. From 85 to 90 per cent of it.

Q. How long have you been in this position at Pine Bluff?

A. Four years and a half.

357 Q. Before the law went into effect that is being contested requiring the third helper, how many men equipped or manned one of your switch engines?

A. A foreman and two helpers, engineer and fireman.

Q. Now since the law you have put on the third man have you?

A. On part of our engines, yes sir, the engines that operate over public crossings.

Q. I will ask you if the third man has added anything to the safety of the operations of those switch engines across public crossings?

A. None whatever.

Q. In your judgment could it?

A. No, sir.

Q. If the other men did their duty?

A. Because the men who operate these engines are not at the crossings; they are switching in the train yards or handling the cars.

Q. Now in your judgment, from your experience there at Pine Bluff and your long experience as a railroad man, is there any necessity for the third helper either for the protection of the public or the efficiency in doing switching ordinarily?

A. Well in some isolated cases for the efficiency of the work the third man is advisable, but wherever that is the case the Company is always willing to put him on.

Q. But as to the protection of people at public crossings is the third man needed?

358 A. I think not, absolutely not.

Q. Does he add anything to the crew?

A. None whatever.

Q. Take that switching crew now when you have got that third man on there ordinary switching; what is his duties?

A. The third man, well he does a little of everything. I have met them up town when I was down town walking around. I have met the third man down town walking around and asked him what he was doing up there and he said, well he was down there working—

Mr. Jones: I object to that.

The Court: Of course that wouldn't be competent.

Q. I will ask you, Mr. Lerew, have you on more than one occasion met the third man up town?

A. Yes sir, several times.

Q. While the other men were doing the switching?

A. Yes, sir.

Q. Do you know whether he would come back and let one of the other boys off or not?

A. I couldn't say as to that; I presume he did.

Mr. Jones: We object to that.

The Court: That of course is incompetent.

Q. I wish you would describe to the court in switching the position of each switchman?

A. I can tell you where he belongs.

Q. That is what I mean, if he is doing his duty where he belongs?

359 A. There is three men. One man is supposed to follow the engine and draw the pins. A second man is called the short field man, and the other one is the long field man.

Q. Who is the long field man?

A. The man who sits around on the flat car and let the others do the work usually.

Q. That is where they have got the third man?

A. Yes, sir.

Q. Leaving him out?

A. Well the second man throws the switches and couples up cars.

Q. What is he called?

A. He is called the field man where you are only operating two men.

Q. What does the foreman do when you had a crew of the foreman and two helpers?

A. He carries the list, directs the cutting of the cars and closes switches, gives signals. He is in charge of that switch engine and the two helpers on the switch engine; he is in direct charge of it.

Q. So your third man—could you make him fit in on top in any way without interfering with the duties of one of the other men?

A. Yes, he could operate in the long field, but where you are handling only a few cars he is absolutely not necessary.

Q. Now take for instance when you are switching; it is the duty of the switchmen to look out for their safety and the safety of the crew isn't it?

Mr. Jones: I object as leading.

The Court: Objection sustained.

Q. As to the safety of the crew would he add anything?

A. None whatever. He would add to the chances of someone getting hurt.

Q. Why?

A. Adding to the number in the crew he would add that amount, twenty-five per cent, on the amount of someone getting hurt. The more men in the crew the greater the chances are of some one of them getting hurt.

Cross-examination.

By Mr. Jackson:

Q. Mr. Lerew, how long has it been since you switched any box cars, actually did the switching?

A. Some years, a good many.

Q. How long has it been?

A. Possibly 25 years.

Q. What was the size of the cars 25 years ago when you were a real switchman?

A. They were much smaller than they are now.

Q. What was the size of the engines in those days?

A. Very small; no equipment on them either.

Q. What was the amount of business compared then to what it is today?

A. Well we used to handle with those engines just about the same amount of business as we do now per engine.

Q. How about the number of tracks in each yard 25
361 years ago when you were a switchman and what they are today?

A. That just simply depends on the size of the yard. We had as much facility in handling the cars then as we have now; all yards are restricted in the track yard room.

Q. In proportion to the amount of business as we have now you had the same trackage then?

A. No sir; U had a great deal more track room 25 years ago than today to handle the business on.

Q. Why; is the shortage of track room caused today by the increase of business to what it was 25 years ago?

A. No, the accumulation of cars in the yard.

Q. Larger cars today?

A. Yes; we have forty foot cars now and that was something unknown in these days.

Q. What was the largest cars you had in those days?

A. About 20 or 25 tons.

Q. What is the average today in each car, what is the largest?

A. Fifty ton cars, one hundred thousand capacity cars, would be fifty tons.

Q. Do you see one hundred and ten or fifteen or twenty thousand capacity cars in this day and time?

A. No, I haven't noticed any.

Q. You are supposed to be out among the cars quite often are you not?

A. Yes, but I am not looking at the capacity of the cars. I have other things to look after.

362 Q. In switching at Pine Bluff do you ever shove any strings of cars over the public crossings in Pine Bluff?

A. Yes, sir.

Q. Your City switching district at Pine Bluff is right down in the heart of the City is it not?

A. Yes, sir.

Q. You switch over the principal streets of the City?

A. Yes, sir.

Q. Right across main street?

A. Yes, sir.

Q. How many cars will each block there in your city hold between streets?

A. I think about seven cars.

Q. Are the streets in Pine Bluff jam up close to the railroad track making blind crossings; have you any buildings now in your city that come right up against the tracks making blind crossings?

A. Yes, sir.

Q. What per cent of all the crossings in Pine Bluff are what is known as blind crossings?

A. There is only one there I think at Main Street that you might consider a blind crossing.

Q. What would you call down at the freight house?

A. That isn't a blind crossing; it is open.

Q. How close are the tracks to the building down at the freight house?

A. Why I should judge twenty feet.

Q. That wouldn't be a blind crossing?

A. No, sir.

363 Q. You say you have only got one street now in Pine Bluff that is a blind crossing that is dangerous?

A. That is all I would consider would be Main Street that has a blind crossing.

Q. How many more tracks then have you there that the building is 20 feet from the track, how many street crossings there.

A. Well all of those street crossings up to Walnut Street yard, city tracks you know go right down by the sidewalk.

Q. Any curves in your yard?

A. Oh yes, there is one curve going down into the Marko Mills.

Q. What about the little team track leading off?

A. That is the track going down there; only one lead going down to it.

Q. Have you ever seen any cars kicked over public crossings?

A. If I did I would fire the man who did it.

Q. You mean to tell me you have fired every man as an official you have seen kicking a car over a public crossing?

A. I would fire any man who would kick a car over a public crossing.

Q. Did you fire them other places when they would kick a car?

A. I never had it done because that is something that is altogether unusual in railroading.

Q. Now you said awhile ago that you had never seen anybody kick a car over a public crossing. Where did you see one
364 kick a car over a public crossing?

A. I don't remember of seeing a car kicked over a public crossing.

Q. Did you ever see one jerked?

A. No sir, not across a public crossing.

Q. In the operation of railroads don't they drop cars?

A. Yes sir, but not across public crossings.

Q. Don't they kick cars in your yards?

A. Yes, they couldn't switch them otherwise.

Q. Don't they shove cars over public crossings?

A. Yes, sir.

Q. Where?

A. Way up town.

Q. How many cars do they handle going up town with cuts?

A. From one to twelve or fourteen cars.

Q. No more than that?

A. Very seldom.

Q. How do they get those cars back to the yards over public crossings?

A. Shove them back.

Q. How many cars do they shove back?

A. About the same number; from one to ten or twelve or fourteen.

Q. Shove them right over on to the crossing?

A. Yes, sir.

Q. You were speaking of the third man, you never saw any place for him. You haven't switched any cars since the third man has been in operation in Arkansas; in fact you never worked on a crew where a third man was used did you?

365 A. Yes.

Q. Where?

A. In Des Moines, Iowa.

Q. Did you find a place there for him?

A. Yes, we had to ride every car and set brakes on them.

Q. Don't you have to ride cars around Pine Bluff?

A. I don't think our switchmen knows what the top of the car looks like.

Q. It has been testified here by other witnesses and stated that the amount of business to be handled depended on the number of men they use in the operation of their engines; in case business should increase to such an extent that a third man could be of necessity in the protection of the Company's property, the employee's lives and the public, would you place him on in Pine Bluff?

A. No sir; I would put on the third engine.

Q. You stated with the third man on the engine there would be more danger of the men getting hurt. Isn't it a fact that the more men the less liability there is as they can properly protect themselves?

A. I don't consider it so. Every time you put a man on the engine you simply add that much more chances for him getting hurt.

Q. Aren't you testifying to that because it is kind of dangerous to be around a railroad?

A. No, not particularly so. I have been on a good many years and haven't got hurt yet.

Q. You are not testifying from actual experience as a switchman where they use three men, but just what your observation
366 is as to railroading?

A. I have actually had the experience as a switchman.

Q. That was 25 years ago?

A. Yes, the same t-ings exist today as then only a little more dangerous then.

Q. Didn't you testify that the business had increased?

A. No sir, I did not.

Q. Didn't you testify about the cars being larger?

A. Yes, sir.

Q. Then you say the business is not any larger today than it was
25 years ago?

A. I didn't say anything about it.

Q. What is your opinion about it?

A. I presume we are doing a heavier business now than we did 25 years ago.

Q. Don't you know?

A. Certainly.

Q. When a car is brought into your Terminals how many times it is jerked around the tracks before it is placed at its destination?

A. As many as necessary. Measures differ with different classes of stuff coming in.

Q. You have to handle each car that comes into your commercial tracks or industrial tracks three and four times don't you?

A. Not necessarily.

Q. But you do do it.

367 A. Sometimes.

Q. That increases the work in the down town district don't it?

A. Why no, no the down town district. The men who handle the City stuff gets his cars out of the main yard and takes them down town and distributes them down there.

Q. When he gets them down there don't he have to cut quite often and nine times out of ten a car is in behind other cars?

A. Certainly that is the way the industrial tracks are handled.

Q. What road are you employed on?

A. Cotton Belt.

Q. Are you classed as an Official of that Road?

A. Yes, sir.

Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Lerew, you said a little while ago that switching was more dangerous now than it was 25 years ago?

A. No, I said it was more dangerous 25 years ago than it is now; simply because we had no safety devices for engines, and we hadn't anything like we have now for the safety of our men.

Q. As to the handling of switching cars now and then, which was the easiest or more dafer now or then?

A. Now.

Q. Which was the more safer as to the public, taking the
368 size of the cars, being bigger now?

A. I wouldn't think that would have any bearing on the safety of the public, the size of the cars. You can get killed with a small car as well as a large one.

Q. What about the breaking power today and then?

A. Well in those days brakes were kept up in first-class shape; now we are using the air brakes.

Q. Are they connected at both ends now?

A. Supposed to be.

Q. Were they at that time?

A. No sir, all single connected brakes.

Q. You have the double braking power now?

A. We have the double braking power now.

Q. You said that you had only one blind crossing in Pine Bluff and that was Main Street. Now I will ask you if on this Main Street, if your track doesn't go up the middle of the street?

A. Yes, sir.

Mr. Jones: We object to that.

The Court: That is leading.

Q. Your track as I understand it goes up Main Street?

A. Yes.

Q. How near your track is the nearest building?

A. Well our main line runs right up the middle of the street. We have a lead coming off I should judge in 15 feet of Pike Street, comes down Pike into what we call the hole, and that track leads right down by the side of a building. On the other side, 369 that is the north side of Main Street, there is a little building comes out there, a watchman's shanty, and this track comes right down there, but it is after you pass the far crossing on Main Street.

Q. If a man would drive up to the crossing on Main Street before he went upon your track could he see the train either way?

A. We have a flagman there all of the time.

Q. Day and night?

A. No, in the day time.

Q. Well could he stop them and see before he got on your track?

A. Yes, sir.

Recross-examination.

By Mr. Jackson:

Q. You said that 25 years ago that braking powers was kept up in first-class condition?

A. Yes, sir.

Q. What are the conditions of the hand braking powers of today?

A. I am not in a position to say; the braking powers though are supposed to be 90 per cent efficient.

Q. On account of your official position your duties don't require you then to climb box cars to find out the condition of those brakes then?

A. No sir, we very seldom set a brake in our yard.

Q. Isn't it a fact the brakes on those box cars are 90 per cent out of condition?

370 A. No, I don't think so.

Q. Do they use air brakes while switching?

A. No sir.

Q. You spoke of the modern equipment and safety of the operation of the railroad today and 25 years ago to the employees. I will ask you was the automatic couplers and air brakes adopted with the consent of the Railroad Company?

Mr. Kinsworthy: I object to that.

The Court: I don't think it is material one way or the other.

Q. Does the Interstate Commerce Commission require the Railroad Companies to keep their brakes in good order?

A. Yes, sir.

By Mr. Jackson:

Q. Don't the Railroad Companies quite often get fined for not doing that?

A. I don't know; I couldn't tell you that; you will have to inquire of a higher official.

Witness excused.

Thereupon the Court sustained the motion to strike out that part of the testimony of S. H. Barnes on the record as it now stands.

Mr. Kinsworthy: Exceptions saved.

371

Testimony of S. H. Barnes, Recalled.

S. H. BARNES, being recalled to testify in behalf of the defendant, testified as follows:

Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Barnes, what experience have you had in the Railroad business?

A. I have been railroading practically for thirty years in various capacities—Station Agent, Train Dispatcher, Train Master and Superintendent.

Q. Did you ever act as a switchman or brakeman?

A. A short time as a brakeman, several months.

Q. Whereabouts?

A. On the Frisco between Fort Smith and Paris, Texas.

Q. Did you ever act as Train Master?

A. Yes.

Q. What point?

A. I was Train Master in Arkansas for the Chocta-, Oklahoma and Gulf; a short time on the Frisco in Missouri.

Q. When were you Train Master last and where?

A. The last I think was a very little of that sort of work I did in the construction of the Midland Valley.

Q. I believe you testified when you were here before that you were Superintendent of the Midland Valley Railroad?

A. Yes, sir.

372

Q. And that you lived at Muskogee?

A. Yes.

Q. You also stated that road ran from what place?

A. From Hartford—Fort Smith, Arkansas, to Wichita, Kansas.

Q. What towns through Oklahoma would you go that were cities of the first and second class?

A. Muskogee and Tulsa.

Q. Any in Kansas?

A. Wichita.

Q. I will ask you if there was any difference in the conditions in the manner of the switching in Oklahoma and Kansas in the towns you mentioned, and Arkansas, in the handling of cars?

A. We don't maintain a switching crew in Wichita. We do at Tulsa and Muskogee, Oklahoma, and Fort Smith, Arkansas; no material difference in the methods; there was considerable difference in the amount of business we handled; at Fort Smith, Arkansas, it was a very light business.

Q. Did you do more business at Tulsa or at Fort Smith?

A. A great deal more at Tulsa and Muskogee than Fort Smith.

Q. What was the condition as to switching cars on public crossings?

A. We switched over public crossings at all of these places; at Fort Smith practically everything we handled was over public crossings.

Q. How about at Tulsa?

A. Everything was over crossings, all the street crossings were open there; every yard track and the switch yard was right in the open; the streets were only an ordinary block apart, and that is true also of Muskogee.

Q. Now, Mr. Barnes, in Oklahoma how many men compose a switching crew?

A. An engineer, fireman, foreman and two helpers.

Q. Do you do all of your switching there with that number of men?

A. Yes.

Q. I will ask you as to a matter of safety in switching across streets, is there any difference between that switching in Oklahoma and that in Arkansas?

A. Not any difference, the same crew.

Q. From your experience do you consider a crew of one foreman and two helpers as safe to the public in switching cars across crossings as one foreman and three helpers?

Mr. Jackson: We object to that; he hasn't qualified as an expert switchman.

Q. Were you ever General Yard Master of the Iron Mountain?

A. I was for a few months.

Q. Whereabouts?

A. At Little Rock.

Q. Well as General Yard Master who was under you?

A. The Assistant Yard Master, the foreman and switchmen.

By the Court:

Q. What observation and experience have you had in switching with the switching crew?

A. I have had charge of the switching crew and supervision of the work that they performed for practically ten years.

374 Q. Have you actually done the work of switching your self?

A. I have never been a switchman; I have been a General Yard Master for a short time.

The Court: I think that is sufficient, gentlemen, to enable him to testify.

To which ruling of the Court the State at the time excepted and asked that her exceptions be noted, which was accordingly done.

Stenographer reads the question.

A. I believe it would give the same results.

Q. The question is do you consider it as safe to the public?

A. Yes.

Q. In Kansas what does the switching crew consist of?

A. The line I was with in Kansas didn't maintain a switching crew in that State.

Q. I want to ask him if he knows how many helpers are used in Kansas?

A. I do.

Cross-examination.

By Mr. Jones:

Q. I believe you stated in your former examination, Mr. Barnes, that the amount of men necessary to do the work safely depended on the amount of business done at a certain point; am I correct?

A. The amount of business that you undertake to handle with one engine has something to do with the number of men that you may use to advantage in expediting that work.

375 Q. Now if you have an occasion, such as a public fair, which would increase the business, of any kind—the amount of cars to be switched, wouldn't that have a bearing on the number of men with each crew?

A. Not with the number of men necessary, no.

The defendant objected to the above question being asked and to the witness being allowed to answer the same, but the Court overruled the defendant's objection and allowed said question and answer to go in, to which ruling of the Court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

Q. You heard Mr. Bray testify did you?

A. Yes.

Q. Was he wrong in his statement regarding that point?

A. Repeat just what he said?

Q. Didn't you testify, Mr. Barnes, when you were on the stand before that the number of men necessary with any given engine depends on the amount of work done by that engine?

A. Am not sure whether I testified to that fact or not.

Q. Well, is that a fact?

A. The amount of work that you may obtain from a given number of engines might depend on the number of men with the engine.

Q. Then if you have an increased amount of business for one engine to do why you need an extra man with that engine; am I correct?

A. It is pretty hard to answer in a general way; you may accomplish more work if you had the additional man.

376 Q. Well if you had this business to do, Mr. Barnes, and one engine to do it and a certain time to do it in, don't you think it would be necessary to have the third man on the engine?

A. If I could accomplish it with two men I wouldn't put on the third.

Q. But the number of men necessary though depends on the amount of business to be done and the time to do it in, does it not?

A. That cannot be answered in a general way; conditions will determine that.

Q. Doesn't it depend on the character of work being performed by a crew and the amount of work being performed by a crew as to how many are necessary to have on the engine crew?

A. Speaking in a general way a foreman and two helpers are sufficient.

Q. Isn't that a fact, what I said?

A. I couldn't well answer that unless you give me a specific case.

Q. I believe when you testified before, Mr. Barnes, you were asked if an additional helper added anything to the crew and you answered: "It depends on the character of the work being performed by the crew; on account of the number of cars there are times when more helpers can be used to advantage." That is true is it?

A. Yes, that is true.

Q. You said you have never been a switchman.

A. Never have.

377 Q. How long has it been since you have been a Train Master?

A. Why I think 1902 or 1903 possibly.

Q. It has been 1902 or 1903 since you were a Train Master?

A. Yes, sir.

Q. Who were you Train Master for at that time?

A. I was Train Master on the St. Louis and San Francisco out of St. Louis, and then shortly afterwards Train Master of construction on the Midland Valley.

Q. Where were you Train Master for the Midland Valley?

A. Out of Hartford, Arkansas, as the line was under construction.

Q. That is a city of the third or fourth class?

A. You might call it a village.

Q. Is it any City at all?

A. I expect there is five or seven hundred people there.

Q. How long has it been since you have acted as Train Master in any City in Arkansas of the first or second class?

A. About 1900 on the road of the Chocta-, Oklahoma and Gulf; now a part of the Rock Island System at Little Rock.

Q. How long did you act as Train Master at that time?

A. Something like one or two years; I don't remember the exact time.

Q. Switching conditions of yards, increased amount of business and a multiplicity of tracks has changed conditions since that time have they not, Mr. Barnes?

A. Yes.

378 Q. I believe you stated that the crossings in Fort Smith are open crossings?

A. I say the switching is done over street crossing in Fort Smith.

Q. Do you know what it means, Mr. Barnes, by kicking a car?

A. Yes.

Q. Did you know before you heard these other gentlemen testify here?

A. I did.

Q. Do you know what it means by dropping a car?

A. I do.

Q. Did you ever see that done?

A. I have.

Q. Did you ever see that done in the Fort Smith yards?

A. No; the work is done up hill in the Fort Smith yards.

Q. Tracks are on a grade there are they not?

A. Yes, and the engine is on the down hill side. I might explain that the business done by the Midland Valley in Fort Smith is very light.

Q. Your work there is quite a bit industrial work is it not?

A. No, very little.

Q. What is the condition of the yards in Fort Smith with reference to curves?

A. Crooked.

Q. The curve of the track would have a bearing on the amount of men necessary to transmit signals would it not?

A. It depends on how the view may not otherwise be obstructed.

379 Q. If a track was curved around a public crossing and a building was placed up right close to the track next to the crossing, that would have a bearing on the number of men necessary would it not to transmit the signal?

A. It would depend on how many cars you are attempting to handle.

Q. But it would affect would it not the number of men necessary to transmit a signal?

A. Where the view is obstructed, certainly you couldn't transmit signals unless one man can see another one.

Q. You have those crossings in Fort Smith do you not, Mr. Barnes, where the view is obstructed?

A. At its yards the view is not obstructed; you can see.

Q. For how many car lengths, do you know?

A. That is hard to say; that yard is small; it is only two or three blocks in length. Where the most of the work is done, it is only about two City blocks, and you can see all of the yard.

Witness excused.

The Court: Since the introduction of additional testimony on behalf of the defendant by this witness the Court will withdraw its former ruling and permit this testimony to stand.

To which ruling of the court in overruling the State's motion to strike out certain parts of the testimony of the above witness and in allowing said testimony to stand the State at the time excepted and asked that her exceptions be noted of record, which was accordingly done.

380

Testimony of L. A. Wallace.

L. A. WALLACE, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. L. A. Wallace.

Q. Where do you live?

A. Wynne, Arkansas.

Q. What is your business?

A. Train Master of the Iron Mountain Railway.

Q. What positions have you held in the railroad world?

A. I began first as yard clerk, and brakeman, conductor and Train Master.

Q. Have you ever done any switching?

A. Switching as a local brakeman, yes, sir.

Q. You say you were Yard Master?

A. No sir—Train Master.

Q. Are you familiar with the way switching is done?

A. Yes, sir.

Q. Are you familiar with the yards at Paragould?

A. Yes, sir.

Q. Please describe the yards at Paragould relative to public crossings and tell where the switching is done?

A. The main train yards are in the south end of the town the industrial yards are in the north end of the town. The breaking up of trains where 98 per cent of the cars are handled there is no road crossings on that yard at all. In the industrial yards out in the town there are eight street crossings.

381 Q. In handling the switching for the industrial tracks what would be the average number of cars, if you know, that the engine would handle at a time?

A. Well in the train yards on an average of about 25 cars.

Q. I am not talking about in the train yards. I am talking about to the industrial tracks?

A. About five or six cars; that would be the maximum amount.

Q. Are the tracks straight or curved on grade or how?

A. They are mostly all straight and a very slight grade.

Q. You say you never acted as a switchman?

A. Well no sir, only on local freight trains. We switched at Newport before we had a yard in there like we do now.

Q. Were you brakeman on the local freight?

A. Yes, sir.

Q. When?

A. In 1897, 1898, 1899 and 1900.

Q. What was your run?

A. First on the local between Newport and Poplar Bluff; we done all of our switching at Newport. Then later on I was between Newport and Little Rock.

Q. When you were brakeman on the freight train how many brakemen did you have?

A. Three.

Cross-examination.

By Mr. Jackson:

Q. You stated, Mr. Wallace, that you were a brakeman on a local freight train?

A. Yes, sir.

382 Q. How long has it been since you have done any braking?

A. 1900 I think or 1901, something like that.

Q. Did the local freight train on which you were a brakeman and did switching at Newport have a conductor and one or two brakemen?

A. Three brakemen.

Redirect examination.

By Mr. Kinsworthy:

Q. They asked you did the local freight train at that time have three brakemen. When you got to the station and got to doing the switching, how many would do the switching?

A. Very frequently one as a rule, never more than two; the rear brakeman would protect his train or unload the local freight, and the other two men would do the switching, or if it wasn't too much of it one frequently would do the switching.

Q. Then when you were braking on the local freight and you were switching at the Newport yards and other yards along, the engineer and fireman and two men would do the switching?

A. As a rule, and lots of time the engineer and fireman and one man would do the switching.

Recross-examination.

By Mr. Jackson:

Q. How many brakemen were used when you were brakeman on the freight train?

A. Three.

383 Q. After you had the way freight unloaded, what would the conductor and foreman do and other brakemen, would they assist him in the switching?

A. If they had the time they would, but as a rule the rear man was busy unloading the freight and the switching was done before he unloaded the freight.

Q. Did you consider a conductor and three brakemen a necessity on freight trains?

A. Why for the proper protection of the train, yes, sir, when they were occupying the main line.

Witness excused.

384 *Testimony of C. B. Wildman.*

C. B. WILDMAN, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. C. B. Wildman.

Q. Where do you live?

A. Van Buren, Arkansas.

Q. What is your business?

A. Superintendent of the Central Division of the Iron Mountain Railroad.

Q. As Superintendent of the Central Division of the Iron Mountain Railroad what territory do you have charge of?

A. The territory from Coffeyville, Kansas, to Argenta, Arkansas.

Q. How long have you been in the railroad business?

A. About thirty-two years.

Q. During that thirty-two years what positions have you occupied, what work have you worked at?

A. As Telegraph Operator, Agent, Train Dispatcher, Chief Dispatcher, Train Master, Superintendent. And I acted as night Yard Master back in 1889 for a couple of months; and in 1898 for several months as night Train Master for the Chicago and Alton, which position carries with it the handling of the night yard men.

Q. Did you ever do any switching?

A. I have done some switching, not to amount to anything though.

385 Q. In any of those positions did you have charge of any switching crews?

A. I had charge of a switching crew at Dodge City, Kansas, and at Belleville, Illinois, for a short time.

Q. Are you familiar with the way switching is done?

A. Yes, sir.

Q. Are you familiar with the way it is done now in Arkansas?

A. I am.

Q. And in Kansas?

A. Yes, sir.

Q. How many towns in Kansas did you ever switch engines that are first and second class cities?

A. I have no jurisdiction over any yards in Kansas.

Q. How many first and second class cities in Arkansas on your territory?

A. Two—Fort Smith and Van Buren.

Q. Fort Smith for instance, what would be the average number of cars that you would handle there daily?

A. From 60 to 100 cars daily.

Q. How many engines?

A. Well from one to two engines.

Q. Do you switch across crossings on grades?

A. In Fort Smith we switch across crossings to some extent.

Q. How long have you been at Van Buren in the position you are in now?

A. I have been there seven years; five years as Superintendent.

386 Q. The other two years as what?

A. Train Master.

Q. As Train Master did you have charge of the yards?

A. Yes, sir.

Q. And did the switching come under your observation?

A. Yes, sir.

Q. Now prior to the present law, I believe you were there were you?

A. Yes, sir.

Q. How many men then composed the switching crew?

A. Engineer, fireman, foreman and two helpers.

Q. How many do you have now?

A. We have an additional helper now.

Q. Three helpers?

A. Yes, sir.

Q. I will ask you if in your judgment as a railroad man and your experience and observation, does the third man add anything to the protection of the public at public crossings in switching?

A. Absolutely none.

Q. As to the efficiency of the work in the towns you speak of in your territory, does it add anything to that?

A. It does not at the points I have charge of.

Q. Take Van Buren now for instance, the yards at Van Buren, can you describe those as to the way they run as to grade, whether the tracks curve or not as to public crossings?

A. Yes sir. The train yard in Van Buren, the tracks are level and straight as a rule and there are no crossings whatever in the train yards. What we call the old yard at Van Buren is located up town and used merely for industrial purposes and for the storing of Company material.

Q. How many street crossings would you cross in doing your industrial switching there?

A. Well ordinarily from two to three.

Q. Did I understand you to say there were no crossings in the main yards?

A. There are no crossings in the train yards.

Q. Can you give me the average number of cars you handle there daily?

A. At Van Buren from three to four hundred.

Q. What per cent of those would be switched across crossings by the switch crew?

A. About five per cent.

Q. What would be the average cut of cars that would be handled by a switch engine in switching to the industries across crossings?

A. I don't quite catch the question.

Q. What would be the average number of cars that a switch engine would handle at a time in doing the industrial switching at Van Buren?

A. From three to five cars.

Cross-examination.

By Mr. Jones:

388 Q. I believe you state that you have never acted as switchman, Mr. Wildman; is that so?

A. I have never received salary as a switchman, no sir.

Q. When is the last time you were Yard Master?

A. In 1898.

Q. Now the yards in the City of Fort Smith, those tracks are very crooked are they not?

A. The tracks in Fort Smith are over industrial tracks; we have no train yard.

Q. Well industrial tracks in Fort Smith, there is several curves in the track is there not?

A. There is some curves; all industrial tracks are about the same.

Q. There are several sharp curves there, are there not?

A. I don't know of any particular sharp curves except the Y; that is about the sharpest curve there.

Q. The switching tracks in Fort Smith are right in the heart of Fort Smith are they not in the business district?

A. They are scattered all over town, all the districts of the town.

Q. Do you know how many switch crossings you have in the city of Fort Smith that your tracks run over?

A. We have in the city of Fort Smith a total of 46—

Q. Where switching is done?

A. Well we have a total of 46 street crossings in Fort Smith.

Q. Total of 46 street crossings where switching is done. Some of those crossings several tracks pass over do they not?

389 A. Some four or five tracks pass over some of them.

Q. And some of them more than that pass over do they not?

A. Well how many for instance?

Q. Well there is places are there not where seven or eight or more t-acks will be parallel?

A. No, I don't recall any place where we have seven or eight tracks in Fort Smith.

Q. You heard Mr. Bray testify did you not?

A. I think so.

Q. You heard Mr. Barnes testify did you not?

A. I heard Mr. Barnes testify.

Q. Now these gentlemen stated that the number of men necessary to be operated on any switch engine depends on the amount of business done by the switch engine in a certain time; is that true?

A. Well that depends on whether in the judgment of the Superintendent he wants that work done within a certain time.

Q. Well in your opinion the number of men necessary to be employed on any switch engine depends on the amount of business you have got to do with that switch engine and the time you have got to do it in.

A. That would only apply to emergency cases in my opinion.

Q. What do you have reference to?

A. For instance during the fruit season when you have a pretty large amount of fruit to handle you may want to expedite your work with an additional number of men.

Q. The number of men necessary on those engines depends on the amount of business done does it not?

390 A. Ordinarily it does not; only in emergencies.

Q. What do you have reference to in emergencies?

A. I just have an emergency, the handling of fruit; you have an increased amount of high-class business, fruit business, perishable business.

Q. That has to be gotten to right away as it is perishable business?

A. That has to be gotten to right away.

Q. Isn't that a case where you have an increased amount of business to do at a certain time?

A. You use your judgment about whether you think an additional man is necessary. I don't put — an additional switchman in cases of that kind; I put on an additional Yard Master.

Q. Well it is necessary to put on at that time in your opinion some additional help of some kind?

A. I put on the additional Yard Master.

Q. Now I believe you stated in Van Buren you have an old yard; is that in the down town district?

A. That is in the down town district. That is the yard that was formerly used before the new train yard was constructed; that has been out of service you might say a good many years.

Q. Do you do switching there now?

A. We only use that yard for storing purposes, and during the fruit season for handling our fruit cars.

Q. I have some pictures here, Mr. Wildman, I would like for you to look over that and see if you know what that is? (Handing photograph to witness) Do you recognize that as being a picture

391 of the tracks at Fort Smith?

A. I see a Fort Smith ice wagon there.

Q. You recognize that as a part of the tracks and business houses along those tracks as being in the Fort Smith switching district?

A. Well I am not particularly familiar with this part of Fort Smith.

Q. Now how close to the buildings along some of your crossings does your tracks run in Fort Smith?

A. You mean along the right of way up to the crossing?

Q. On the industrial tracks?

A. Oh, they run some of them six or eight feet from the track, the same as all industrials do. Industrial tracks you know are built for the convenience of the industries they serve.

Q. Your tracks there in Fort Smith pass along close to the red light district do they not, the industry tracks?

A. I have heard that they did.

Q. There was a party injured there was there not by being struck by a switching car?

A. One of our switchmen you mean ?

Q. No sir—a pedestrian across the tracks?

A. I don't remember of a pedestrian across the tracks being injured there. I remember one of our switchmen being injured there.

Q. There was an automobile struck at that point was there not?

A. There was an automobile truck struck at that point at the time our switchman was injured.

Redirect examination.

By Mr. Kinsworthy:

Q. Do you remember how that accident happened there?

A. Just as that accident occurred the switch engine was moving along and all four of the switchmen were on the switch board, the foreman and the three helpers, and they were running quite slow, and this automobile truck of the Fort Smith Light & Traction Company came out of their plant at a rather high rate of speed, and our engine stopped on the crossing. So the engine stopped on the crossing and the truck ran into it. Three of the switchmen were able to get off the switch board, but the fourth man couldn't get off and had a leg broke.

By Mr. Jones:

Q. Do you know this of your own knowledge?

A. Yes, sir.

Q. Did you see it?

A. No sir, the man himself told me.

Mr. Jones: We ask that it be stricken from the record.

The Court: Everything about the accident will be stricken out then.

Witness excused.

W. C. MORSE, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. W. C. Morse.

Q. Where do you live?

A. Wynne, Arkansas.

Q. What is your business?

A. Superintendent of the Memphis Division of the St. Louis, Iron Mountain & Southern.

Q. How long have you been Superintendent there, Mr. Morse?

A. About four years.

Q. What positions have you held and at what have you worked since you have been in the railroad service?

A. Telegraph Operator, Station Agent, Train Dispatcher, Chief Dispatcher, Train Master, and Superintendent.

Q. Ever do any switching?

A. Yes sir, I have done some switching.

Q. When?

A. Three or four years ago.

Q. How long has it been since you were Train Master?

A. Seven years ago.

Q. Whereabouts?

A. McGehee on the Valley Division of the Iron Mountain Railroad.

Q. As Train Master did the switching crews come under your observation?

394 A. Yes, sir.

Q. The movements of trains?

A. Yes, sir.

Q. What towns in your jurisdiction in Arkansas are cities of the second class or first class where you have to employ the third helper?

A. Paragould, Wynne and Helena.

Q. Well take the yard at Wynne. Can you describe to us the location of the yard as to crossings and grades and as to curve of tracks, if any; tell us about the yard there?

A. The main switching yard at Wynne is on what is known as the Helena-Paragould main line and north of the crossing on the Bald Knob-Memphis line. There are two or three tracks on the Memphis line where a small per cent of the switching is done. Both of the yards are level on both the Bald Knob and Helena line?

Q. How as to curvature?

A. The tracks in both yards are straight; that is the switching tracks.

Q. Did you ever do industrial switching at Wynne?

A. Not very much.

Q. Do you know how many industries you switch to there?

A. Four I think is all.

Q. In switching to these industries how many cars does an engine handle on the average at a time.

A. Not more than three or four ordinarily.

Q. Where is the bulk of your switching done?

395 A. In the main classification yard on the Paragould line, north and south line.

Q. In the yard where this switching is done are there many crossings?

A. There is one crossing and that is at the south end of the yard. This crossing does not cross the yards but crosses the main line just south of the south switches, which is south of the south ladder track you might say.

Q. In doing your switching in that way, your classification, etc., and making up cars do you switch across crossings or not, and if so how many?

A. More or less switching is done over that one crossing, which is south of the south end of the main classification yard. The foreman of the switch engine puts in most of his time at or very near that crossing.

Q. Is the crossing protected in — way by bells or watchmen?

A. No sir.

Q. Now what per cent of the cars in the switching there would be switched across this one crossing or any crossing at all?

A. I estimate not more than five or ten per cent of the cars are switched over crossings in Wynne; probably twenty per cent are handled over the crossings in transfer tracks from one yard to the other and to and from industries.

Q. What would be the number of cars usually handled there on the average per day?

A. An average taken for eight months last July to February inclusive was 167 cars.

396 Q. How many to the engine?

A. 93.

Q. We will take Helena for instance. How many crossings do you cross there in doing the switching?

A. Seven. There is fourteen in the inside of the corporate limits; seven of them on the main line.

Q. Are any of those protected in any way by gates or watchmen or bells?

A. Two of them are protected by gates and watchmen also.

Q. What are the average number of cars you handle in Helena a day?

A. 195.

Q. What is the average number per engine?

A. 41.

Q. Is the switching at Helena largely industrial or train switching?

A. Almost altogether industrial.

Q. In reaching the industries in Helena are they located in the town or out?

A. Outside principally.

Q. Do you cross many crossings in going to these and from them?

A. Quite a number, which include private crossings in the Mill yards.

Q. Now, Mr. Morse, prior to the time that the law that we are contesting went into effect you were at Wynne were you not?

A. Yes, sir.

397 Q. How many men did you use to the crew prior to this law at Wynne and Paragould and Helena.

A. A foreman and two helpers, an engineer and fireman.

Q. Since the law went into effect you have added one additional helper?

A. Yes, sir.

Q. I will ask you from your experience as a train man do you consider that the additional helper gives any more protection to the public at public crossings than before.

Mr. Jackson: We object to that. He hasn't qualified that he is familiar with switching. He is not a switchman.

A. I never drew the salary as a brakeman or switchman, but did more or less of that when I was Train Master and I have done just a little bit since I have been Superintendent.

Q. How long did you serve as a Train Master?

A. Eight months. As a matter of fact I did more I guess after I was promoted to Superintendent for the first two or three years than I did while I was Train Master, for the reason I was Superintendent and Train Master.

Q. What connection did you have with switching then after you became Superintendent?

A. The first two years I was Superintendent I had no Train Master, and I had direct charge of the Yard Masters and train crews. It was my duty in that position to ride freight trains considerable, supervise the work; and I have at different times when I was on the local freight train helped do switching, filling in when the brakemen were loading and unloading freight.

398 Q. Now about how much time have you spent in observing switching as it is done in these yards in Terminals, about what proportion of your time?

A. I would estimate an average of an hour every day. My office in Wynne is almost in the middle of the yard; it is right at the intersection of the two main lines. I observe the movements there more or less all day long.

Stenographer reads the question as follows:

Q. I will ask you from your experience as a Train man do you consider that the additional helper gives any more protection to the public at public crossings than before?

The Court: I will overrule the objection.

To which ruling of the Court the State at the time excepted and asked that her exceptions be noted of record, which was accordingly done.

A. I do not.

Q. Do you get any more work out of an engine with the additional helper?

A. No sir, not in the yards mentioned.

Cross-examination.

By Mr. Jones:

Q. Now how long has it been since you acted as Train Master, Mr. Morse?

A. Seven years ago when I acted as Train Master only. I held the dual position of Superintendent and Train Master until 1910.

Q. Now the switching that you speak of that you did when you had occasion to ride a local freight was that in a smaller town chiefly?

399 A. Principally so, yes.

Q. Well how many men were on the crew of the local freight?

A. Conductor and two brakemen.

Q. Now what is the condition of Helena, Mr. Morse, with reference to curves in the tracks?

A. There are a number of curves in the Helena yard.

Q. Now as a matter of fact, Mr. Morse, aren't there some of the industrial houses right near the depot in Helena where there is some very sharp curves?

A. There are some industries on curves and in one or two instances sharp curves, yes.

Q. Do you know the condition of the Illinois Central tracks there?

A. I do.

Q. They are very curved are they not in their yards?

A. Not very much, no.

Q. There is curves in the yards is there not?

A. Very light curves on all of the L. & O. switch tracks.

Q. With reference to the location of the tracks, Mr. Morse, in Helena, there is some of the buildings in places right close to the tracks are they not?

A. In some instances, yes.

Q. Now there is one track in Helena is there not, Mr. Morse, where a man cannot see more than two or three car lengths on account of the curving right around the side of a building?

A. I should say that he could see probably five car lengths at least on the sharpest curves; the one I have in mind.

400 Q. You heard Mr. Bray testify did you not?

A. I did.

Q. Is it correct in his statement that the amount of men necessary to be employed on the switch engine and the switching crew depends on the amount of business at a certain point?

A. Well that depends; in my experience the only place we would need more than two men and the helper would be on the long lead and classifying cars, making and breaking up trains or on long transfer tracks possibly in cities.

Q. Mr. Morse, did you ever see a cut of cars pushed in the Helena yard?

A. Yes, I have.

Q. Now as Superintendent would you sanction a cut of cars pushed around those curves without a man on the front car?

A. No, sir.

Q. Now if you are pushing any considerable string of cars around one of the curves in Helena where a building is jam up to the tracks, as you say they are in some places, where you cannot see more than four or five or six car lengths as the case may be—if you have a string of cars, don't you think at that point you would require the third man?

A. No.

Mr. Kinsowrthy: I make this objection, that the law don't refer to any places except at public crossings.

But the court overruled the defendant's objection and allowed the above question and answer to stand, to which ruling of
401 the court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

Q. If you had a cut of cars or eighteen or twenty cars pushing them around one of those close curves where you couldn't see more than four or five car lengths why you would need the third man at that point would you not to properly transmit the signals?

A. Yes, we would if we shoved that many cars; but it is not necessary. If it should become necessary to handle that many we would take them in two cuts.

Q. Now as a matter of fact, Mr. Morse, aren't that many cars pushed around there in the Helena yards?

A. Not to my knowledge around those sharp curves.

Q. The public walk up and down the tracks there do they not, along near the depot?

A. More or less trespassing there, yes.

Q. And there is street crossings going down to the levee there is there not?

A. Yes. Those street crossings leading to the levee are just simply across the main line; they don't cross the main yards.

Q. What is the name of the street next to the depot, Iron Mountain depot?

A. Missouri just north of the depot.

Q. There is a street crossing there is there not?

A. Yes.

Q. Did you ever see a car kicked across a crossing?

A. I don't recall ever having seen a car kicked across a street crossing.

402 Q. Now there is a place where a car cannot be run into a track in any other way except dropping is there not?

A. No sir.

Q. Didn't you ever see a track where a car had to be jerked into its place?

A. I have seen them jerked, yes, but you can do it another way.

Q. There is places where you cannot get a car in a track except to drop it without losing four or five minutes is there not?

A. Yes, there is such instances as that.

Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Morse, he asked you if there wasn't a sharp curve—he said on the Illinois Central, but I suppose it is the L. N. O. & T. They have got pretty sharp curves on that road in Helena haven't they or are you familiar with it?

A. Yes, I am familiar with it. Their curves aren't so sharp as some of our sharp curves. They had one curve that might be called sharp, one where they crossed our main line, but we have a few curves that are quite sharp.

Q. Where is their track as to our depot?

A. They run about two blocks north of our depot to the Y. & M. V. station about three blocks?

Q. As to going through the principal part of the town and along the levee and across the street going across the levee, do their tracks cross their?

A. Yes sir, the L. N. O. & T. tracks cross Natches and Missouri Streets, which are two of the business crossings in Helena; have a great deal of business over those two streets; the view of both crossings is obstructed more or less.

Q. How many men or do you know does the L. N. O. & T. Railway Company use at Helena in their switching crew?

A. I have been told——

Mr. Jones: We object.

Q. If you don't know, don't say.

A. I don't know positively. I would like to qualify one statement that I made in regard to curves on the L. N. O. & T. There is one curve in the L. N. O. & T. yard that I believe would be called a sharp curve, and that is near where they cross the old Arkansas Midland main line; the view is obstructed there; it adds to the hazard and I believe any railroad man would call that a sharp curve.

Recross-examination.

By Mr. Jones:

Q. Now, Mr. Morse, who owns and operates the L. N. O. & T.?

A. I don't know.

Q. That is a part of the Illinois Central system is it not?

A. I have heard it said it is, but I don't know.

Q. Did you ever see an L. N. O. & T. car?

A. U recall seeing a switch engine stenciled L. N. O. & T.

Q. Is there a single switch engine in Helena used by that road that is not marked Y. & M. V. or the Illinois Central?

A. I cannot say as to that. I have seen engines stenciled Y. & M. V., and as I said before I remember distinctly seeing one stenciled L. N. O. & T.

Q. How long ago has that been?

A. Probably a year ago since I noticed the L. N. O. & T. engine particularly.

Q. Did you ever see a box car used in Helena labelled L. N. O. & T.?

A. I don't think I did.

Q. Isn't the Bulletin board on the station at Helena labelled Y. & M. V. and Illinois Central?

A. I cannot answer as to that.

Q. Do you know how their pay checks are signed?

A. I do not.

Q. Do you know how the passes are issued?

A. I do not.

Q. What about Arkansas Street there, Mr. Morse; that comes right around a curve does it not, the tracks at Arkansas Street?

A. Our main line crosses Arkansas Street I think on the curve or it is near the point of the curve anyway.

Q. That is across the public street?

A. Yes.

Witness excused.

405

Testimony of J. D. Moore.

J. D. MOORE, of lawful age, being duly sworn and examined as a witness on the part of defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. J. D. Moore.

Q. Where do you live?

A. Helena, Arkansas.

Q. What is your business?

A. Assistant Superintendent of the Iron Mountain Railroad.

Q. How long have you been in the railroad business?

A. Forty years.

Q. You discovered it, didn't you?

A. Yes, sir.

Q. What positions have you occupied in railroad work?

A. Brakeman, switchman, yard master, agent, and superintendent.

Q. How long have you been in Helena?

A. Seven years.

Q. Where were you before you went to Helena?

A. At Van Buren.

Q. What position did you have there?

A. Superintendent.

Q. Where were you before that?

A. At Lake Village.

Q. What position did you have there?

A. Superintendent.

Q. You say you used to be a switchman?

406 A. Yes, sir.

Q. When were you a switchman?

A. I was a switchman in Nebraska on the Union Pacific.

Q. When?

468 A. It has been so long ago I have about forgotten; it was about
I think.

Q. When were you a brakeman?

A. I was a brakeman before I was a switchman, and afterwards too.

Q. When were you a Train Master?

A. I was never a Train Master.

Q. A Yard Master?

A. Yes, sir.

Q. Whereabouts?

A. At Grand Island.

Q. When?

A. About 1870, I think.

Q. What position have you held with this company, after you
came with the Iron Mountain road?

A. Superintendent.

Q. Now, during your long period of railroading, has your work
thrown you in connection with the switchmen?

A. I have been very intimate with them.

Q. Have you had occasion to observe the manner of their work
outside of your experience?

A. Yes, sir.

Q. Do you know how switching is done in Arkansas now?

A. Yes, sir, I do.

407 Q. You say you have been at Helena how long?

A. Seven years.

Q. Are you familiar with the yards at Helena?

A. I know every foot of the Iron Mountain yards.

Q. Are you familiar with the Louisiana, New Orleans & Texas
Railroad at Helena?

A. A portion of it, I have a general knowledge of it.

Q. That is sometimes called a part of the Yazoo & Mississippi
Valley, isn't it?

A. Yes, sir, I think so.

Q. Do you know whether or not it is a separate corporation?

A. I do not.

Q. Is it operated as a separate corporation from the Yazoo & Mis-
sissippi Valley Railroad?

A. I couldn't tell you that.

Q. Do you know whether or not that road complies with the law,
that, the Full Switching-crew Act?

A. From my observation—they come right by my office door,

the tracks are right by my office, and all I can say is that they have two helpers on an engine.

Q. You see their engine frequently?

A. Yes, sir.

Q. How often?

A. Oh, when I am — Helena I suppose I see them fifty times a day.

Q. How much time do you spend at Helena?

A. About four days out of the week. I go out on the —
408 leaving Helena in the morning and getting back in the afternoon, and there's about two days in the week I'm all day there.

Q. Can you say from your observation how many men they use on their switch engines?

A. Two men is the usual number; that is, a foreman and two helpers.

Q. Now as to the yards of the L. N. O. & T. Railway, and the Iron Mountain, as to danger in switching; please state which is the more dangerous, if any?

A. I would consider the L. N. O. & T. yards more dangerous, on account of their curve and grade.

Q. Describe the yards as to grade, the difference in the grades?

A. They have a very heavy grade, a much heavier grade than we have in the yards at Helena, particularly coming from the passenger depot over Elm Street down to Missouri Street where our depot is located. And then they also have a pretty heavy grade from Arkansas Street down to the bottom or end of their track.

Q. Taking the two roads, which has more street crossings?

A. The Yazoo & Mississippi Valley, or the L. N. O. & T.

Q. Before this law went into effect how many men did you use on the engine, switch engine?

A. Foreman and two helpers.

Q. How many do you use now?

A. Four and five.

409 Q. How many does the L. N. O. & T. use?

A. One and two.

Q. Does the L. N. O. & T. Railway Company switch any cars for any other railroad except this Yazoo & Mississippi Valley Railroad?

Mr. Jones: We object to that. That was brought out in our demurrer, or our motion to strike out about the railroad switching cars for other railroads.

Mr. Kinsworthy: We can show all the switching done by them.

The Court: I will sustain the objection and let you save your exceptions, to this testimony of this L. N. O. & T. Railway Company.

Mr. Kinsworthy: Then you will not permit me to prove that the L. N. O. & T. Railway Company switch cars for the Missouri & North Arkansas Railway, at Helena?

The Court: No, that will be overruled.

Mr. Kinsworthy: Then I wish to state what we desire to prove, for the record.

The Court: All right.

Mr. Kinsworthy: The defendant offers to prove by witness J. B. Moore that the L. N. O. & T. Railway Company at Helena does the switching for the Yazoo & Mississippi Valley Railway Company, a railroad more than three hundred miles in length; and all of the switching for the Missouri & North Arkansas Railway Company coming into Helena, said road being over three hundred miles in length; and that on account of the length of the *length of the*

410 road—the L. N. O. & T. road not being fifty miles in length—it does not have to comply with the law and use the third helper, and it does not comply with the law and does not use the third helper; and that in proportion to the number of engines used by the L. N. O. & T. Railway Company that it does as much switching in the town of Helena as the St. Louis, Iron Mountain & Southern Railway Company does, and switches across public crossings in the city of Helena.

But the Court refused to permit the defendant to introduce the testimony above indicated; to which ruling of the Court the defendant objected and excepted, and the defendant asked that its exceptions be noted of record.

By Mr. Kinsworthy:

Q. Mr. Moore, before the law went into effect at Helena what did you say the switching crew consisted of?

A. A foreman and two helpers.

Q. Now you say it consists of what?

A. A foreman and three helpers.

Q. In addition to the fireman and engineer?

A. Yes sir, in addition to the fireman and engineer.

Q. I will ask you if you consider, in your judgment, that the switching done now with the additional man is any safer to the public than it was without the additional helper?

A. No, it is not.

411 Q. As to the efficiency, do you know? Do you get any more work done with the extra man?

A. Our records show that we get just a trifle less.

Q. From your judgment and experience as a railroad man, is there any necessity for the third helper there, for the public safety, or efficiency, or otherwise—for the third man in the town of Helena?

A. No.

Cross-examination.

By Mr. Jones:

Q. How long has it been since you've done switching?

A. You mean coupled cars?

Q. Yes.

A. About ten days.

Q. For a business I mean?

A. About thirty years ago, since I have switched.

Q. Don't you think you would appreciate the jeopardy to the traveling publi- on account of having the third man?

A. No, I don't think it cuts any figure on that at all.

Q. You say the number of men in a switching crew depends on the amount of business at a certain point?

A. I can't say that I do?

Q. You don't agree with some of these other witnesses then?

A. I agree that the conditions have something to do with it; for instance, if they have a long grade, or a necessary long lead, and it is necessary to ride the cars, why the third man would be
412 necessary.

Q. You heard Mr. Morse testify?

A. I did.

Q. You heard him testify that where cars are pushed around the curve and the view is obstructed, sometimes they would need the extra man; is that true?

A. No, in that case you'd put a man at that place, on the curve, so the signal could be passed.

Q. Who owns the L. N. O. & T. Railroad?

A. I don't know.

Mr. Kinsworthy: I have got a man here to prove that by if you will let me.

The Court: If you open that up I will let the defendant go into the whole thing.

Mr. Jones: I will withdraw it.

By Mr. Jones:

Q. The tracks are curved in places at Helena, are they not Mr. Moore?

A. Yes, sir.

Q. And the buildings are close to the tracks, adjacent to the tracks in places, are they not?

A. Close to some buildings, yes.

Q. The track at the point of Arkansas Avenue is very curved, is it not?

A. Before it reaches Arkansas Street there is a sharp curve.

Q. Are there any grades in the track?

A. Yes, sir.

Witness excused.

413

Testimony of L. L. Kensinger.

L. L. KENSINGER, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. L. L. Kensinger.

Q. Where do you live, Mr. Kensinger?

A. St. Louis.

Q. What is your business?

A. Terminal Superintendent for the Missouri Pacific and Iron Mountain.

Q. How long have you been Superintendent there?

A. Five years.

Q. What experience have you had in the Railroad business?

A. About 32 years.

Q. What have you filled during that time?

A. Brakeman, conductor, switchman, Yard Master, Assistant Yard Master, Train Master, Terminal Superintendent and General Yard Master.

Q. Do you know the length of your yards in St. Louis over which you switch?

A. About 340 miles of Terminals.

Q. How many switch engines?

A. Sixty-one switch engines at the present time.

Q. Do these yards have grade crossings over them?

A. I think there is 169 crossings, something like that.

Q. Are some of them protected by gates?

A. Some protected by gates, some are not protected, some
414 have got bells.

Q. Some are not protected there by gates or bells?

A. Yes, sir.

Q. Out of the 61 switch engines that you use there what composes the crew on those engines?

A. Well there is some particular engines—I think there is 43 engines we have with a foreman and two helpers. They are what is known as outside crews and industrial crews.

Q. I will ask you where do there 43 engines that you have a foreman and two helpers on do their work, as to the public crossings?

A. Well they start out in the morning with the train of cars; run from 25 to 50 cars, pull them out to certain districts and there they classify them and deliver them to the different industries. We have something like five hundred industries in St. Louis that our tracks cover, that we take care of.

Q. What I want to get at, do these 43 engines that have a crew consisting only of a foreman and two helpers, do they pass over these street crossings at grades?

A. Yes sir, they pass over the street crossings at grades.

Q. Do you have any trouble in handling that business with that crew?

A. Never have.

Q. Would a third man add anything to the protection of the public or safety?

A. None whatever.

415 Q. How many engines have you with more than that many helpers on it?

A. We have some engines with five helpers and have some with four and have some with ten.

Q. Where do they work?

A. The ones with the ten helpers is in our hump yard.

Q. Well we have no hump yards.

A. Our train yard engine, our engine that makes up trains uses four men, sometimes five.

Q. Is there any public crossings across the track they work in?

A. No.

Q. Is there any public crossings across the tracks where any of your trains are made up where you use four helpers?

A. Yes, there is one at 23rd Street.

Q. Is it protected?

A. It is protected by a crossing watchman and gates both.

Q. Now have you any other crew smaller or larger than the one you have mentioned?

A. I didn't catch that.

Q. Have you any other crews smaller or larger than the ones you have mentioned?

A. Well they run from two helpers and a foreman to five helpers and four helpers.

Q. You have some with two helpers?

A. We have 43 engines working now with a foreman and two helpers.

416 Q. Now how many with one helper, if any?

A. We have none with one helper.

Q. Now do you transfer cars from East St. Louis to the Terminals over in Illinois?

A. When our boats are out of service, we do, yes.

Q. How many do you use on that switch engine to make those transfers?

A. A foreman and two helpers.

Q. Do you know how many the Terminal Railway Company uses in their transferring?

A. Yes sir, I worked for them about eight years; I ought to know.

Q. How many do they use?

A. Some engines has one foreman and one helper; some has one and two; some has one and three.

Cross-examination:

Q. The fact that there is no crossings over these tracks that you employ four or five or ten helpers, if there were crossings over there you wouldn't take off those extra helpers would you?

A. Well the yard where we break up trains, it is a grade yard; you use more men to ride cars. The more helpers you have the quicker you can break up a train.

Q. Not it is more dangerous isn't it to kick or push a car across a public crossing than it is in a yard, if people are passing along the crossing?

417 A. It is more dangerous to kick a car over the crossing than it would be to cut a car off in the yard where there isn't any crossing.

Q. The number of helpers necessary to be used on the switch engine depends on the amount of work then to do in a certain time doesn't it, Mr. Kensinger?

A. No. There is lots of times that you could handle a great deal more business with the crew if you had it, but you couldn't take the crew off if you didn't have half the business.

Q. That wasn't answering my question. If you have the number of men necessary to be used on the switch engine, that is necessary to be used, it can be either increased or decreased by the amount of business that switch engine has to do at a certain time?

A. No, we never decrease them or add to them.

Q. The amount of help connected with a switching engine depends on the amount of business they have to do in a certain time does it not?

A. No sir.

Q. Will you tell me why it is then, Mr. Kensinger, during Fair times at Hot Springs they put on an extra man?

A. I suppose they want that man to act as a Yard Master; that relieves the foreman of acting as a Yard Master.

Q. Well the foreman's duties as Yard Master is to take orders is it not?

A. I didn't catch that question?

418 Q. The foreman has to receive his orders does he not?

A. Undoubtedly he has to get his orders from some one.

Q. He has to make trips at times to yard offices and other places to get these orders does he not?

A. Not necessarily, no. The agent might want to send the Yard Master or the foreman a switch list and he would send him word out by the messenger boy and give it to him.

Q. While you were a switchman don't you know it was a fact that the foreman, or you as foreman, most of the time and a large percentage of the time had to go up to the yard office and get your orders or else phone in and get them?

A. No, we don't switch that way in St. Louis; if we did our foreman wouldn't get much work done.

Q. Do you know the conditions in Arkansas regarding that?

A. No, I don't.

Q. It is more dangerous to switch on a curve than it is on a straight track is it not?

A. That would depend on what was there and the conditions there.

Q. It would depend on the curve and anything that might obstruct the view?

A. If you had a bad curve your crew would look out for it going around it.

Q. Did you ever see a car kicked over a crossing, Mr. Kensinger?

A. I don't recall it.

419 Q. Did you ever see a car kicked in a yard?

A. They kick them every day in the yard, in a local yard. They have to kick them to get them in the clear when they are switching them.

Q. Did you ever see a car dropped?

A. Yes, sir, many a one.

Q. Just explain to the court what you mean by dropping a car?

A. Dropping a car is where you may have a car behind your engine into this switch. Now to drop that car if you were going to do it over a crossing you would put one man at the crossing and the other man would throw the switch, and one man would ride the car and cut the car off.

Q. When you dropped a car, if you were going to drop it over a crossing you would first place a man at the crossing?

A. First put the man at the crossing, one helper.

Q. You would put a man on the car at the front end?

A. A man could hang on the train and pull the pin and ride the car in.

Q. A man would have to throw the switch?

A. One man would throw the switch, one man at the crossing; one man would throw the switch and the other man would cut the car off and ride it. I have done it a thousand times.

Q. It is dangerous to do that at a crossing is it not?

A. No, I wouldn't consider it dangerous to do anything if
420 I had a man at a crossing.

Q. It is dangerous to do that without a man at the crossing?

A. No man but an insane man would do it without a man at the crossing?

Q. Have you ever seen that done without a man at the crossing?

A. No, sir, never in my experience.

Q. Haven't you done that yourself?

A. No sir. I have dropped many a car at a crossing, but had men there to protect the crossing.

Q. You have dropped cars across the crossing though without a man there to protect it?

A. Done it many a time, on the local freight train and in the yard.

Witness excused.

A recess of the Court was taken until Tuesday morning April 7th, 1914.

421 The Court met pursuant to adjournment at 8:30 a. m. April 7th, 1914.

Whereupon, the following proceedings were had:

Testimony of C. W. Streeter.

C. W. STREETER, of lawful age, being duly sworn and examined as a witness on the part of defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. C. W. Streeter.

Q. Where do you live, Mr. Streeter?

A. Kansas City, Missouri.

Q. What is your business?

A. Superintendent of Terminals for the Kansas City Southern Railway Company.

Q. At what point?

A. Kansas City, Missouri.

Q. What experience have you had, how long have you been in the railroad business?

A. Twenty-eight years.

Q. What experience have you had during that time in railroad service?

A. You mean in what capacity?

Q. Yes?

A. The capacities of switch foreman, yardmaster, general yardmaster, superintendent of terminals, and a short period as brakeman.

422 Q. How long have you been Superintendent of Terminals for the Kansas City Southern at Kansas City, Kansas, (Missouri)?

A. Eighteen months.

Q. I wish you would describe to the court the yards over which you do your switching at Kansas City, and note the yards as to grades, curves, and as to crossings.

A. The particular division over which I have jurisdiction is forty miles in length, and it includes a total of 115 miles of track; included in that 115 miles there is thirty-two miles of grade varying from five-tenths of one per cent to six and six-tenths per cent. We have twenty-eight tracks having a curvature greater than twenty degrees—varying from twenty to sixty degrees curvature. We have something over 100 grade crossings, if I remember correctly it is 107. We have 86 standard railroad crossings, and 35 street railway crossings. These crossings are in group from one single crossing to as high as twelve in one place,—varying from one to twelve, necessitating 38 recognized crossings—railroad crossings—and 15 street car crossings.

Q. Now take all of these street crossings that you speak of, how are they as to being protected; are they protected by gates, all of them or some of them or how?

A. Of those I mentioned, all those are grade crossings; we have some subways, I didn't include any of those; they are no interference with the crossings. Of the grade crossings ten are protected by flagmen.

423 Q. Those others are unprotected?

A. Yes, sir.

Q. As I understand, in mentioning the crossings you have not mentioned any subways or viaducts?

A. No, sir.

Q. How many switch engines do you use in your terminals in Missouri and Kansas?

A. We are using at the present time twenty-three switching crews.

Q. Have you the data from which you could give me the average number of cars you handle a day?

A. The average number of actual cars is about 900 actual cars moved in the terminals.

Q. What class of switching do you do in the yards that you described?

A. Freight work, in and out bound transfer work, and industrial work.

Q. What amount of industrial work do you have?

A. Well, we have a great deal. I can say at the present time the per cent unless I would estimate it.

Q. You have a fair proportion of the industrial work in a city of that kind?

A. Yes, a great deal more than some other roads.

Q. How does your road compare with the other roads in the city?

A. I think our road stands second in the industrial work. We serve seventy-five industries that have private tracks.

424 Q. How many men do you find it necessary to have in your switching crew to do this switching?

A. A foreman and two helpers on all crews.

Q. Mr. Streeter, from your experience as a railroad man and from your knowledge of switching, do you find a foreman, engineer, fireman and two helpers sufficient for all the work that is necessary for the efficiency of your work, and also for the protection of the public at crossings?

A. Yes, sir; I do.

Q. From your experience would a third man—third helper on this engine give the public any greater protection at the public crossings in doing switching?

A. Absolutely none.

Q. You have not familiarized yourself with the conditions in Arkansas—you have no jurisdiction in Arkansas—Are you familiar with the yards in Arkansas?

A. No, sir, I am not.

Cross-examination.

By Mr. Jones:

Q. You are an Official of your road?

A. I presume so.

Q. Your road runs in Arkansas?

A. Yes, sir.

Q. Have you any places in Arkansas where you are required to put on the third man?

A. I believe so, I understand so.

Q. You heard some of the gentlemen testify here, did you not?

425 A. Yes, sir, some.

Q. I believe some of them testified that the number of men necessary on a switch crew would depend on the amount of work to be done by the switch engine; is that correct?

A. No, sir, it is not correct.

Q. You differ with them?

A. Yes, sir.

Witness excused.

426

Testimony of O. C. Cornelson.

O. C. CORNELSON, of lawful age, being duly sworn and examined as a witness on the part of defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. O. C. Cornelson.

Q. Where do you live?

A. Pittsburg, Kansas.

Q. What is your business?

A. Superintendent for the Kansas City Southern, Northern Division.

Q. Over what part of the road does your jurisdiction extend?

A. From Grandview to DeQueen, Arkansas.

Q. You have all the lines in the State of Arkansas?

A. Not all of it. The part between De Queen and Texarkana, that is in the Southern Division; that part in Arkansas between Texarkana and De Queen is in the Southern Division. I do not have that.

Q. You haven't charge of Ashdown?

A. No, sir, I have not.

Q. Do you know whether Ashdown is a city of the second class?

A. I don't know.

Q. Do you know whether you have to employ a third switchman at Ashdown or not?

A. I understand we have no yard crew at Ashdown, but
427 but we have a yard crew at De Queen.

Q. I just want to know if you know?

A. I am not quite certain.

Q. How many cities in Arkansas do you have where you have to employ the extra man?

A. Two, Fort Smith and De Queen.

Q. Please describe the yards at De Queen?

A. De Queen is a district terminal point for the Kansas City Southern Road. We handle about 300 cars a day out of that place, figuring on the number of cars coming into that terminal at De Queen and the number of cars out. The industrial switching at that station is very light. The train yards where trains are made up and broken up lie outside of the city limits, that is, a great portion of them do, and there is no street crossings there, over the train yards at all. There are two highway crossings over the depot or industrial yards, over which there is a very small percentage of travel. And about one per cent of all the cars that come in there or

pass through De Queen are handled over the crossing in the depot or industrial yards, where the team track work is done.

Q. I understand from that that 90% of your switching at De Queen is done where there is no crossing at all?

A. I said about one per cent is done in the industrial yards, that is, industrial work. Leaving about 99% to be done in the train yards where there are no crossings.

428 Q. In these train yards, is there a crossing in those yards?

Mr. Jones: I object to that.

The Court: Answer the question.

A. There are no crossings there over the right-of-way in the train yards.

By Mr. Kinsworthy:

Q. Now Fort Smith—Will you give us a description of your yard at Fort Smith?

A. At Fort Smith it is more of an industrial proposition for the Kansas City Southern Road. It is a terminal in a way over the branch over which it operates between Fort Smith and Spiro. We handle but one train out of Fort Smith in twenty-four hours, and one in; and each train handles on an average twelve cars each way a day. And we have an exchange at Fort Smith with the other roads entering there; the average exchange at Fort Smith runs around 225 cars; and as between our line and the other lines that we connect with there, making an average of about eight cars per day, extra. We employ one yard crew at Fort Smith that works during the daytime; that works from seven o'clock in the morning to six o'clock at night, about that; it may vary a few minutes. And that crew is engaged in switching cars to industries and to the team tracks, and from team tracks and these various industries to the connecting lines.

Q. In switching freight cars with your crew in the town of Fort Smith, what would be the number of cars which it would
429 handle a day, if you can give us that?

A. In the morning they go out, and as I said a moment ago, we have twelve cars into Fort Smith over our road and take an average of twelve cars out, every twenty-four hours, in a day or every day; and we exchange with other roads, that is, deliver and receive eight cars.

Q. That would be thirty-two cars?

A. Yes, sir.

Q. Could you give me the average number of freight cars handled by your switch engine at Fort Smith at a time, or at each movement?

Mr. Jackson: We object to that; he is not qualified to state.

The Court: He is not familiar with that, is he?

By Mr. Kinsworthy:

Q. Are you familiar with the switching at Fort Smith?

A. As familiar as can be from walking through the yard and talking with the men.

By the Court:

Q. Is that the only knowledge you have?

A. I have not participated in the work.

Q. Have you had any active control or supervision of the work?

A. I am Superintendent of the Division in which Fort Smith is located.

Q. How often are you there?

A. Once every week.

Q. How much time do you spend in the yards where switching is done over public crossings?

430 A. Probably an hour on the occasion of each visit there.

Q. Are you in a position to answer that question?

A. Not as accurately, probably, as it should be answered.

The Court: I don't think he is sufficiently qualified to answer that question.

Mr. Kinsworthy: I save my exceptions to the court's ruling.

By Mr. Kinsworthy:

Q. The average number of cars handled per day then would be how many, according to the figures?

A. As I explained it before. 12 received and 12 forwarded, and 8 exchanged each day.

Q. Now out of these thirty-two cars as I understand you have mentioned, twelve of them are in a train going out and twelve in a train coming in?

A. Yes, sir.

Q. And eight cars that you receive from other companies?

A. Received or delivered, or exchanged as we express it.

Q. What additional expense is your road put to in employing this third man?

Mr. Jones: I object to that.

The Court: The objection is sustained.

Mr. Kinsworthy: We save our exceptions.

Mr. Kinsworthy: One of the allegations in our complaint is that our property is taken without due process of law, and we've got to show that expense.

The Court: I was misinformed, and I will overrule the objections, and you may save your exceptions Mr. Jackson.

431 Mr. Jackson: We save our exceptions.

By Mr. Kinsworthy:

Q. All right, now Mr. Cornelson, if you can tell us, what additional expense your Company is put to in Arkansas on account of employing the extra man?

A. \$300.00 per month divided between Fort Smith and De Queen.

Q. What experience have you had as a railroad man?

A. About thirty years.

Q. What have you done during that time?

A. Operator, train dispatcher, chief train dispatcher, train master,

superintendent, superintendent of transportation and general superintendent.

Q. How long were you Train Master?

A. About three years.

Q. As train Master did you have an opportunity to observe the handling of cars by switch engines?

A. Yes, sir.

Q. I will ask you then how many men did you have at Fort Smith and De Queen on the switch engines prior to this law?

A. At Fort Smith we had a foreman and one helper, except that during the cotton season we put on one additional helper, making a foreman and two men, prior to the enactment of this law.

By the Court:

Q. Is your experience as Train Master over the same division of which you now work?

432 A. No, sir.

Q. Where was it?

A. My experience as Train Master was in Chicago, Illinois, with the Chicago & Great Western Railway.

Mr. Kinsworthy: The switching is the same there?

The Court: That is a question of proof.

By Mr. Kinsworthy:

Q. Take these places where you were Train Master and where switching was done under you, what difference, if any, in the manner of doing the switching in the yards where you were Train Master and the switching in Arkansas?

A. I have never found any difference, particular, in the method of doing the work, as far as safety is concerned. It is necessary to have extra men on some crews in some places and on some tracks than on other places and other tracks.

Mr. Kinsworthy: I think he is qualified to go on.

By the Court:

Q. How much time have you spent in Arkansas during your experience as a railroad man?

A. About three years, during two periods of service, during the last four years.

Q. In what capacity?

A. As Superintendent only.

Q. What opportunity have you had to observe switching operations in Arkansas?

A. I have not been engaged in performing switching service, but I have had occasion in the performance of my duties to visit yards in Fort Smith and De Queen in my regular trips over the
433 road, and sometimes I might stay in the yards perhaps an hour and at other times I might be there for half a day.

Mr. Jones: We submit, Your Honor, he is not qualified to testify.

The Court:

Q. Have you seen switching done in those two towns, in De Queen and Fort Smith?

A. Yes, sir.

Q. As Superintendent, I believe you stated a while ago, that you visit these places about once a week?

A. Yes, sir.

Q. Have you seen switching done over public crossings at those places?

A. I wouldn't say that I saw switching done over public crossings particularly, or just what work I saw in the yards, but wherever I happened to be; they do switching over public crossings in both places.

Q. Can you state that you are familiar with the switching operations in these two towns as it is now carried on?

A. Yes, sir.

Q. Do you have any supervision or control over the men that do the switching?

A. I have the Superintendent's control over them. The men are directly under the agent at both of these places. We have no train master at either town.

Q. No Yard Master?

A. No, sir.

434 Q. The only man under you is the agent, in that respect?

A. The agent is the man between the switchmen and Train Master, and the Train Master reports to the Superintendent.

The Court: All right, go on.

A. At De Queen, prior to the enactment of this law, we employed a foreman and two helpers; but since the law became effective we employ a foreman and three helpers.

By Mr. Kinsworthy:

Q. Now from your knowledge of the manner of doing switching and your familiarity in the yards and manner of doing the switching at De Queen and Fort Smith, does the third man add anything to the safety of the public in doing that switching across crossings?

A. We had no accidents before and have had none since.

Q. You find it does not?

A. I find it does not add anything to the safety of the public.

Q. Does it add anything to the efficiency of the work?

A. It does not. We got through in the usual number of hours in handling our business before this extra man was put on, and we do the work in the same number of hours now.

Q. Then in your judgment is there any necessity for this third man, either for the protection of the public or the efficiency of your work.

A. There is not.

435 Cross-examination.

By Mr. Jones:

Q. Where are you located?

A. At Pittsburg, Kansas.

Q. You are an Official of what road?

A. The Kansas City Southern.

Q. I believe you stated you are Superintendent of the Kansas City Southern?

A. Yes, sir.

Q. How are the operations of a railroad conducted, as to expense occurring in each man's division; are they charged up to him?

A. I don't understand just what you mean.

Q. Is each Superintendent of your road charged up with the actual expense incurred on that division?

A. The accounts are made to the general office, as far as the general expense is concerned, and statements are sent out showing what the operation is, if you refer to the expense of the switchmen and yardmen and expense of that sort; these payrolls are made right in the Superintendent's office, and these pay rolls are approved by me before they are sent to the General Office, for official approval there.

Q. Now in keeping the expense, the expense incurred on your division and the amount of profit on your division; how is that done?

A. We keep a statement of the accounts, that is, of the earnings and expenses the same as an account is kept in any industry.

436 Q. I believe you stated you have one train in and one train out of Fort Smith, and then you have an exchange track?

A. We have one train in and one train out of Fort Smith that carries freight every twenty-four hours; then we have an exchange service with other roads there in Fort Smith.

Q. How do you know how many times each day these trains are moved in and around the tracks at Fort Smith?

A. No, sir, I do not.

Q. You employ one switch engine?

A. One switch engine, and it works ten hours a day.

Q. At times in Fort Smith you are pretty busy switching?

A. Part of the time they are pretty busy, and part of the time they are standing around doing nothing.

Q. You say you work ten hours a day?

A. Ten hours.

Q. Now the amount of men on each engine depends on the amount of business, does it not?

A. It does not; if it does we would take two men off at Fort Smith.

Q. For what reason Mr. Cornelson, do you employ an extra man during the cotton season?

A. During the cotton season there is probably three times as much work as there is during the other nine months in the year.

Q. Then doesn't the amount of men employed on the switch

engine depend on the amount of business done by the switch engine?

437 A. No, sir, I don't think it does, because it does not work both ways.

Q. Will you explain to the court why the extra man was put on during the rush season, or during the cotton season?

A. I have explained that; because there is three times as much business during the cotton season as there is during the other nine months in the year; and right now, which is not the cotton season, we have three men, when before the law went into effect we had two during the cotton season only.

Q. Before the law went into effect you had to employ how many?

A. We had a foreman and three men—No, we had four men.

Q. When were you Train Master last?

A. 1901.

Q. Where did you say you acted?

A. On the Great Western road, over in Illinois.

Q. What has been the increase in the size of the car since then?

A. I've never figured that up, but we had very large cars during my time as Train Master. It has not been so very many years ago?

Q. Do you know the average size of a car now?

A. We had 80,000 capacity cars then.

Q. Did you ever see a 115,000 capacity car?

A. Not then, no.

Q. But you see these cars now, do you not?

A. Not very often, no.

438 Q. It is a very common thing to have cars of 100,000 capacity, is it not?

A. It is not infrequent at all.

Q. The amount of business done by your road has increased considerably since 1901, has it not?

A. I believe there has been an increase; I couldn't tell you just what it has been though.

Q. How many engines do you employ at De Queen?

A. We work one engine there.

Q. Day or night?

A. Half and half. It begins at midnight and finishes in the day about noon.

Q. I believe you stated that the amount of switching in the various places, or various yards that required switching, depends on the circumstances, does it not?

A. I said the manner in which the work was done in each yard might be varied a little to conform with the grades and curves that were peculiar to each yard. But the principle is the same in all yards.

Q. Now you have no Train Master at Fort Smith?

A. No Train Master at Fort Smith; we have one whose jurisdiction covers that point.

Q. You have no Yard Master at Fort Smith?

A. No Yard Master at Fort Smith, no.

Q. Who handles the business in the crew with reference to orders?

A. You mean such as the switch list that the yard foreman usually carries?

Q. Yes.

439 A. The yard foreman carries out the switch list of the work; usually he is furnished that by the agent who performs the general duties of the yard foreman.

Q. Who occupies the position of yard foreman to carry out the instructions of the yard master?

A. The agent, as far as the switching is concerned.

Q. Did you have that yard foreman before you were required to put on the third man?

A. We always had a yard foreman in charge of the engine.

Q. Is the yard foreman the same thing as the switch engine foreman?

A. Yes, sir.

Q. A yard foreman and switch engine foreman is the same thing on your road?

A. Oh, yes.

Q. Now the switch engine foreman, he receives his orders from the agent, does he not?

A. Yes, in the usual process of the work, so far as the switching is concerned, yes.

Q. As yard foreman and switch engine foreman he keeps in touch with the agent by trips to the office and the telephone and things like that?

A. Various orders are issued, which are most convenient, and it is done just like in most of the yards.

Q. Now the yard foreman, he is the one that talks with the proprietors of the industry houses as to where cars should be spotted, does he not?

A. I believe he does, more or less talking with the people who are in charge of these houses that the cars go to.

440 Q. Now what is the pay of your extra man per hour, do you know?

A. 35 cents, I believe, if I remember correctly.

Q. That amounts to \$3.70 a day, does it not?

A. \$3.50 a day.

Q. \$3.50.

A. Yes, sir.

The Court: How many hours a day?

A. Ten hours.

By Mr. Jones:

Q. \$3.50 a day at that place; that is the average earnings of that man?

A. Yes, sir.

Q. Then how many hours a day does the man at De Queen work, extra?

A. That is irregular. He works some days ten hours and some days twelve hours, and some days eleven. I have not got an average of that.

Q. Does he ever work less than ten hours?

A. He never works less than ten hours. We always have to pay him for ten hours.

Q. That is provided by the contract with the switchman?

A. Yes, that is a minimum day.

Q. Now the engine works—Does that engine work on Sunday at De Queen?

A. Yes, sir.

Q. Does it work at Fort Smith on Sunday?

441 A. No, it does not every Sunday, an-way. I am not sure whether it works some Sundays or not.

Q. Now they don't work any Sundays, do they?

A. No, I don't believe they do.

Q. Now will you tell me how you arrive at this \$300.00 extra expense that you are put to on account of this law?

A. From an average taken from the train yard rolls.

Q. If a man works ten hours a day and does not work Sundays, that would be twenty-six days a month, or \$78.00 a month?

A. How do you figure it?

Q. Well, you say he works twenty-six days at thirty-five cents an hour; he would receive \$78.00 per month, wouldn't he?

A. It would be about \$91.00, wouldn't it?

Q. Well, what would the man at De Queen receive a day?

A. I believe their average is eleven and a half to twelve hours a day.

Q. Would he receive \$210.00 per month?

A. One man wouldn't.

Q. How did you figure this then if one man at Fort Smith receives \$91.00 and the extra man at De Queen didn't receive \$209.00, how do you figure the average cost, or the extra cost would be \$300.00?

A. You understand we put on two extra men at Fort Smith instead of one.

Q. You are figuring from—not in the cotton season but the other part of the year?

A. The cotton is a very small expense for the year.

442 Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Cornelson, I understand the more work you had the more men you would have to do the switching; you say during the cotton season you had two men at Fort Smith, and during part of the year you only had one; I understand during the rush season you had two helpers.

A. One foreman and two helpers.

Mr. Jones: I object to that.

The Court: The objection is sustained.

Mr. Kinsworthy: I save my exceptions.

Q. During the rush season at Fort Smith would you add anything to the efficiency of that crew by adding the third man?

A. No, sir.

The Court: That would be a leading question.

By Mr. Kinsworthy:

Q. A switch engine equipped with an engineer, a fireman, a foreman and two helpers, would it or would it not, by adding the third man, make the crew do any more work, in Fort Smith or De Queen during the rush season?

A. No, sir, it would not.

Witness excused.

443

Testimony of Chas. Kees.

CHARLES KEES, of lawful age, being duly sworn and examined as a witness on the part of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. Charles Kees.

Q. Where do you live, Mr. Kees?

A. Hoxie, Arkansas.

Q. What is your business?

A. I am a Yard Master.

Q. At Hoxie?

A. Yes, sir.

Q. How long have you been in the railroad business?

A. About thirty-five years.

Q. During that time what various work have you done with the railroad?

A. Well, switching, braking, conductor and Yard Master.

Q. Are you familiar with any of the yards in Arkansas except at Hoxie?

A. Yes, sir.

Q. Which ones?

A. I have had service at Fort Smith, Van Buren, and Gurdon, and a short time at Argenta.

Q. At Hoxie, how many men do you use with your switching crew there.

Mr. Jones: I object; that is a city of the third class, and that is not in question.

The Court: I am not certain about that. I made the ruling as to the Warren & Ouachita Valley Road at Warren—

444 Mr. Kinsworthy: The Court didn't rule out the testimony about Gurdon and a number of other points.

The Court: I don't think it will have any value if it is not a city of the first or second class.

Mr. Kinsworthy I just want to show his experience.

The Court: If the questions are introduced for the purpose of showing his qualification, all right; that is, as to his experience at Hoxie.

By Mr. Kinsworthy:

Q. Do you know how many cars a day are switched in the yards at Hoxie?

Mr. Jones: That is the very thing I am objecting to.

Mr. Kinsworthy: If they will admit that he is competent to testify, I will go on.

The Court: Ask him about these towns in which you have complied with the law.

By Mr. Kinsworthy:

Q. How much time have you put in the service as switchman and brakeman and Yard Master?

A. How much time during my experience?

The Court: Take the switchman first: How much time have you worked at that?

A. I presume I worked as switchman about ten years.

By Mr. Kinsworthy:

Q. How long in Arkansas?

A. I've been in Arkansas eleven years; been Yard Master most of the time.

Q. How long have you been Yard Master in Arkansas?

A. Ever since I have been here.

Q. Ten years?

A. Yes, sir.

Q. Are you familiar with the manner of switching and
445 the manner in which switching is done in Arkansas?

A. Yes, sir.

Q. In how many different yards have you worked in Arkansas?

A. Fort Smith, Van Buren, Gurdon, and Argenta and Hoxie.

Q. Well, from your experience as a railroad man and your knowledge of switching, of how it is done in Arkansas, is it necessary, for the public safety or the efficiency of the switch engine crew, to have three helpers?

A. Not in my opinion, no, sir.

Q. Does the third man add anything to the safety of the public crossings?

A. I wouldn't think so.

Cross-examination.

By Mr. Jones:

Q. How long has it been since you acted as switchman?

A. As switchman?

Q. Yes?

A. I switched some a year and a half ago.

Q. In Arkansas?

A. No, not in Arkansas.

Q. Where did you act as switchman?

A. In Colorado.

Q. You are classed as an official of the Iron Mountain, are you not?

A. I believe so, as General Yard Master.

Q. Now relating to the number of men necessary in any yard, or in any given crew, that depends on the circumstances of the different yards, and the amount of business in the yards, and the
446 geographical location of the yards, doesn't it?

A. I don't understand your question.

(Question read.)

A. Does what depend?

Q. The number of men as you as Yard Master would put on a crew?

A. No, I don't quite understand you now.

Q. Well, doesn't the number of men that you as yard master think necessary to put on a crew, doesn't that depend on the amount of business handled; the geographical location of the yard, with reference to grade, and the amount of business done in the yard.

A. It would depend some on the grade. If we had a gravity yard and had to ride the cars, I would consider it necessary in order to handle more business, to have more help.

Q. The yards where they have grades in the yard, is that a gravity yard?

A. No, sir.

Q. Isn't any yard that has a grade in it a gravity yard?

A. Not necessarily. I don't understand it to be a gravity yard; I understand where the cars roll without being kicked, after they cut them off, and they have to ride them, that is a gravity yard.

Q. Isn't any track where a car will roll of its own will, or motion, isn't that a gravity track?

A. It is a track with a grade.

447 Q. That is the same thing as a gravity track, where a car will roll of its own motion, isn't it?

A. That wouldn't be a gravity track or a gravity yard.

Q. You think that the number of men necessary on any crew would depend on the gravity of the track, as you just said?

Mr. Kinsworthy: There is no proof that there is any gravity track or any gravity yard in this State.

The Court: Go ahead and answer the question.

By Mr. Jones:

Q. Now are there any tracks in Arkansas, Mr. Kees where the cars will roll of their own motion?

A. Certainly we've got tracks where cars will roll.

Witness excused.

448

Testimony of J. E. Hutchinson.

J. E. HUTCHINSON, of lawful age, being duly sworn and examined as a witness on the part of defendants, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. J. E. Hutchinson.

Q. Where do you live, Mr. Hutchinson?

A. Springfield, Missouri.

Q. What is your business?

A. I am General Superintendent for the St. Louis & San Francisco Railroad Company.

Q. Generally known as the Frisco?

A. Yes, sir.

Q. Have you any territory in Arkansas?

A. Yes, sir, I have a little over 140 miles in Arkansas.

Q. Describe to the court the extent of it, over what part of the State it goes.

A. The line enters the State near Mammoth Spring, Missouri, and goes out of the State at Memphis. And then I also have fifty miles of main line running from a connection with this same main line twenty miles west of the Mississippi River crossing, running north to the State line at Yarbrow, between Yarbrow, Arkansas, and Holland, Missouri.

Q. Well, the road going down by Fayetteville, is that a part of the Frisco?

A. Yes, sir, it is a part of the Frisco, but it is not under my direct charge.

449 Q. Who has charge of that?

A. Mr. Frates. I, as General Superintendent, had charge of it up until four years ago; I have not had it since four years ago.

Q. Are you familiar with it?

A. Yes, I spent some time on that.

Q. How long did you have charge?

A. I had charge as General Superintendent for two and a half years.

Q. Do you know how many towns of the first and second class on your road, say, going down by Fayetteville, where you have to have the additional switchman?

A. I think Fayetteville and Fort Smith is all.

Q. What about Rogers?

A. I don't think we employ a regular switching crew there, unless it is quite recently, at Rogers.

Q. At Fort Smith and Fayetteville you have the extra man?

A. Yes, sir.

Q. Do you know whether you use more than one switching crew at Fort Smith, or not?

A. I couldn't tell you right now; I think they use at least three all the time, from that to five.

Q. You had three when you were there?

A. Had three and four, and once in a while five. I think the same conditions practically prevail.

Q. How many did you have at Fayetteville?

A. Just one engine.

Q. Where are your main yards at Fayetteville?

A. The main yards are at what we call Fayette Junction.
450 We have two branch lines that come in at Fayetteville, and there is some industry switching at Fayetteville, in the city proper. But the principal part of the train work is done at Fayette Junction.

Q. Is that outside of the corporation limits?

A. I imagine it is, I am not right sure.

Q. Are there any grade crossings across your main yards at Fayette Junction?

A. I don't recall a single crossing.

Mr. Jones: Fayette Junction is outside of the city limits.

Mr. Kinsworthy: The switch engine doing the switching runs into Fayetteville and has to comply with the law, and of course they have to have the third man.

Mr. Jones: We are going to object to any testimony about any crossing at Fayette Junction.

The Court: Of course it is not in the city limits it is not affected by this law, except that part of it—that part of the switching that is done in the city.

Mr. Kinsworthy: They have to do it with the same crew, Your Honor, and it is effective in this way: If they were not going to use the engine anywhere except Fayette Junction they would not have to have the third man, but they have to go into the city and do the industry switching and on that account they have to have the third man. This third man is not going to sit down and wait just because they are going out of town. This engine is doing this work at both places, and it is absolutely necessary to comply with this law on this engine.

451 I want to ask this question now: Whether there is a crossing at Fayette Junction; and whether that is inside of the city limits or not they only have one switch engine at Fayetteville and that switch engine does the switching at Fayette Junction and at Fayetteville, and for that reason they have to have the third man.

The Court: The objection will be overruled.

Mr. Jones: We save our exceptions.

By Mr. Kinsworthy:

Q. What per cent of the switching at Fayetteville is done at Fayette Junction?

By Mr. Jones:

Q. Do you know?

By Mr. Kinsworthy:

Q. From your best judgment now?—as to the number of cars handled?

A. As to the number of cars handled I would think there was at least seventy-five or eighty per cent of the total business done at Fayette Junction.

Q. From your best judgment, how many cars would you handle daily by that switch engine in Fayetteville proper—in the city of Fayetteville?

A. I doubt if the number would exceed 25 a day in Fayetteville proper.

Q. How many crossings, grade crossings, would you go over in doing the industry switching in the city of Fayetteville?—if you remember; that is, on your switching tracks?

A. I think there are about seven or eight.

Q. I believe you stated you had only one switch engine at Fayetteville?

A. That is all.

452 Q. And that engine does the work both at Fayette Junction and in the city?

A. It does.

Q. I will ask you whether or not the cars that are brought into Fayetteville are switched from Fayette Junction up to town?

A. Almost all of them, with some few exceptions, are switched at Fayette Junction; some are switched from the Junction up to town.

Q. Take the yards at Fort Smith: Where are your yards at Fort Smith located?—Is Fort Smith a division point?

A. Yes, sir, Fort Smith is a division point and our yards are right in town, right in the heart of the city, you might say.

Q. Your main yards?

A. Yes, sir.

Q. How many crossings have you across your main yards?

A. On the lead where the principal amount of switching is done, as I recollect it, there are four crossings.

Q. Are any of these protected by a watchman or bell?

A. They were protected by a bell the last I knew of them.

Q. All of them?

A. Yes, I think so; I am not sure; the last I knew of them they were.

Q. Now on your road from Springfield to Memphis; how many yards on that line,—or how many cities of the first and second class on that line?

453 A. We have two yards on the line; one is at Jonesboro and the other one is what we call our west yards at Memphis. There is no town over at our west yards at Memphis, and I assume it doesn't come under this head.

Q. That is on this side of the river?

A. Yes, sir.

Q. Jonesboro would be the only city of the first or second class on that line then?

A. Yes, sir.

Q. Have you any cities on your line that goes through Blytheville

A. Yes, sir, our road goes through Blytheville, but we have no regular switching crew at Blytheville.

Q. How many switching crews do you keep at Jonesboro?

A. Two; one night and one day; and occasionally we work the th-rd crew, but not very often.

Q. Can you describe the yards at Jonesboro?

A. The Jonesboro is an industrial proposition; not very much train work done there. There is quite a large number of industrial tracks, but all the industrial tracks are not in the city.

Q. Could you give me the number of cars that you handle on an average daily at Jonesboro?

A. No, I cannot, Judge, with any degree of certainty; I would have to guess at it.

Q. From your judgment, how many cars would be handled by a switch engine in a movement?

By Mr. Jones: If you know.

454 A. In doing the industrial work, which is most of their work, the cuts are small; they will handle from four to fifteen or sixteen cars, and occasionally make train moves; take up a piece of a train on one track and set it over on the other; and in that case they would handle a large number of cars, perhaps fifty or sixty.

By Mr. Kinsworthy:

Q. In doing that, picking up a train and taking it over from one track to another, what kind of a movement would that be?

A. I would describe it in this way: A train would come into Jonesboro with instructions to fill out going north and south. The switch engine would come and get hold of that caboose right in on the track and pick up a number of cars they wanted to add to that train, and pull it out of that track and shove it onto the train.

Q. That would be the only movement?

A. Yes, sir.

Q. I believe you stated you had two engines at Jonesboro?

A. Yes, sir; one day and one night, and occasionally the third one.

Q. One at Fayetteville?

A. Yes, sir.

Q. How many at Fort Smith?

A. The last I knew we were working on an average of four engines at Fort Smith; I am not certain, it is about that.

Q. Making seven engines in all?

A. Yes, sir.

455 Q. What additional expense is your road put to on account of the third man, or third helper in the switch crews?

A. It would run a little over a \$100 to the engine.

Q. That would be approximately \$700.00 per month?

A. Yes, approximately.

Q. How many States does your jurisdiction extend into?

A. I believe I go into seven States.

Q. What States are they

A. Kansas, Missouri, Oklahoma, Tennessee and Mississippi, Alabama and Arkansas.

Q. Are you familiar more or less with the different yards in the different States?

A. Yes, sir, I have more or less direct charge of all of them, not only in the seven States I now have direct charge of, but in the States of the other part of the line; which was Texas—I guess Texas is the only one I don't touch now.

Q. Do you know of any law requiring the third helper to the switch crew, outside of the State of Arkansas?

Mr. Jones: I don't think that is competent.

The Court: Go ahead, I would like to know.

Q. Do you know of any law outside of the State of Arkansas where they require an engineer, a fireman, a foreman and three helpers?

A. No law in any State that I am interested in, or no other State that I ever heard of.

Q. As to the manner of doing the switching Mr. Hutchinson, is there any difference in Arkansas and the other States that you have mentioned?

Mr. Jones: I object to that.

The Court: Let us find out if he is qualified.

By Mr. Kinsworthy:

Q. What positions have you worked in in railroad service Mr. Hutchinson?

A. Well, sir, I have been messenger boy, telegraph operator, agent, train dispatcher, chief dispatcher, yard master, train master, superintendent of terminals, division superintendent, and general superintendent.

Mr. Kinsworthy: That qualifies him; he has been yard master and train master, and we've gone over that a dozen times.

The Court: I think he is qualified to answer.

(Question read.)

A. No, sir, the manner and method of doing switching is practically the same everywhere.

By Mr. Kinsworthy:

Q. Take the yards that you have in Arkansas, that you have described: Is it any more difficult to switching in these yards than it is in any other State that you have mentioned?

A. No, sir, the yards we have in Arkansas are very simple propositions, nothing like as difficult as Kansas City, Memphis, or Birmingham.

Q. Are they as difficult as Springfield, Missouri?

A. No, sir.

Q. How much mileage have you in your terminals at Springfield, Missouri?—about how many?

A. About 60 miles of terminal mileage.

457 Q. About how many grade crossings would you go over?

A. I have never counted them, but there are about seventy-five or eighty.

Q. How many of these would be protected, if any?

A. Not more than ten.

Q. Now I will ask you if in the States you mentioned—take all the States that you have mentioned, how many men do you use in manning your switch engines? In other words, what composes your switch crews?

A. The switch crew is composed almost universally of an engineer, fireman, a foreman and two helpers.

Q. Take Springfield: how many do you use there,—Springfield, Missouri?

A. An engineer, fireman, foreman and two helpers.

Q. From your experience, Mr. Hutchinson, is the third man that is required in Arkansas, necessary either for the efficiency of the work or for the protection of the public at crossings?

A. Absolutely no, not in my opinion.

Q. Does it add anything to the safety of the public at crossings?

A. I am quite sure it does not.

Cross-examination.

By Mr. Jones:

Q. I believe you state, Mr. Hutchinson, you don't know of any State that has the third helper law—the third helper with the switch engine, as required by law?

A. No, sir.

458 Q. Do you know of any States where they use the third helper?

A. Yes, I use them myself.

Q. Now there are places in Alabama, Tennessee, Missouri and Texas, where they use the third helper?

A. Yes, we've got places where they use ten or twelve.

Q. All of these places are on the gravity yards?

A. They never use the third helper except on the gravity yards.

Q. Do you know whether they use the third helper at Houston, Texas, or not?

A. I was never in Houston, only one time and that was after dark.

Q. Do you know whether they use the third helper in Alabama, except on the gravity yards?

A. I have no personal knowledge of it.

Q. Do you know whether they use the third helper in Missouri, or Kansas, or other places, except on those gravity yards?

A. Not personally.

Q. Do you know of any places, leaving out the gravity yards, where they have the third man.

A. I know that they have the switch engines in Memphis, Tennessee, that they have four men on.

Q. Do you know any other places where they use four men?

A. I do not.

Q. Do you know of any places where they use the four men except in St. Louis?

459 A. I know they do in Kansas City.

Q. Now there are places over the United States, aren't there Mr. Hutchinson, where they use the third man, and that they are not in the gravity yards?

A. That is possibly so.

Q. Now a gravity track is a track where the car will roll of its own motion, will it not?

A. A gravity track?

Q. Yes?

A. There is a wide distinction between a gravity track and a gravity yard.

Q. On tracks in a gravity yard the cars will roll of their own motion?

A. A gravity yard is built for the express purpose of cars moving by their own motion.

Q. You state you have four crossings in the main yard at Fort Smith where the principal amount of business is done; now how many crossings have you in the city of Fort Smith, Mr. Hutchinson, where switching is done across these public crossings?

A. I cannot answer that, as I haven't any recent knowledge of that.

Q. At any rate there is a great deal more than four crossings there?

A. Yes, very much more than four.

Q. How many miles of switching tracks have you in Arkansas, that you know of?

A. In our two yards at Jonesboro and at Harvard—

Mr. Kinsworthy: You can't take in Harvard; they won't
460 let us do that. Just where you have the third switchman.

A. At Jonesboro I suppose there is possibly ten miles of industrial track.

By Mr. Jones:

Q. Does that include the main line at Jonesboro?

A. No, sir.

Q. They do switching on the main line, don't they?

A. Yes, sir.

Q. They switch cars very often over all the various tracks, going out and coming back over all the various tracks, and do that daily, don't they?

A. Yes, practically; there are some tracks that they might not go over every day.

Q. How many yards have you in Fayetteville?—or I mean how many miles of switching track have you in Fayetteville, that is, in-

dustrial tracks, main line, or any other track, that you cross street crossings?

A. I don't want to answer that question directly, because my knowledge of Fayetteville is not recent.

Q. There are a great deal more tracks there now than there were then, when you were there, are there not?

A. I expect there are some industry tracks probably.

Q. Do you know how many crossings on the main line of the Frisco Railway in Fayetteville across streets, across the streets of Fayetteville?

A. The principal traffic of Fayetteville goes over a viaduct and at a subway. There are several grade crossings within the corporate limits; really I have forgotten the names of the crossings.

Q. What is the name of the street where your depot is located?

A. I don't remember.

Q. The University is on that street, isn't it?

Mr. Kinsworthy: That is on Dickson street.

By Mr. Jones:

Q. That is a grade crossing at that street?

A. Yes, sir.

Q. School children cross there going to the University?

A. I have seen them cross there.

Q. There is the direct route for all students living in the downtown district, isn't it?

A. There is a viaduct and a subway, one block to one side and one block to the other. They don't have to use that grade crossing, if they do use it.

Q. There is no viaduct there at that crossing on Dickson Street?

A. No sir.

Q. You say you have large industrial tracks at Jonesboro?

A. Yes, sir.

Q. These tracks go to the different industries of the city?

A. Yes, sir.

Q. The yards at Fort Smith are in the downtown district?

A. Yes, sir.

Q. The yards cross over crossings in the downtown district of Fort Smith?

462 A. Those are crossings leading for the most part from the town to the river.

Q. Do you know any State in the United States that had the third brakeman law before Arkansas passed it?

Mr. Kinsworthy: I object to that.

The Court: That is argument; the objection will be sustained.

Redirect examination.

By Mr. Kinsworthy:

Q. Mr. Hutchinson, you stated you knew of yards in the various States where you did use the third helper; if you know please state why that third man is used at those points, or on those engines?

A. Well, we have a yard in Kansas City, Missouri, that is a very heavy train yard; it is just a conservative proposition, and when our train movement is heavy—our business coming in off the road is heavy, we add a man to the crew that does the switching in that train yard in the making up and breaking up of trains, and classifying cars, for the reason cars cut off and switched into the tracks in that yard will run with considerable force, and it is necessary to ride them and set the brakes on them, and if we wait for a man to ride the car and then return to the engine to ride another car before we cut the car loose, we lose a great deal of time with the engine, and by adding a man we keep the engine working and keep them pushing cars into these various tracks with a man to ride
463 them.

Q. Do you know of any place in these various States where the third man is put on on account of safety at the public crossings?

A. I have never known of it.

By Mr. Jones:

Q. Time is a great item in switching in yards at Kansas City, isn't it?

The Court: What is it?

Mr. Jones: I asked him if time in the switching operations is a great factor?

A. Conservations of time and energy is a big item everywhere.

Witness excused.

464

Testimony of J. F. Hilton.

J. F. HILTON, of lawful age, being duly sworn and examined as a witness on the part of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. J. F. Hilton.

Q. Where do you live, Mr. Hilton?

A. Argenta.

Q. What is your business?

A. Engine foreman for the St. Louis, Southwestern Railway Company.

Q. That is the Cotton Belt?

A. Yes, sir.

Q. How long have you been in railroad service?

A. About fourteen years.

Q. What positions have you held during that time?

A. I have been engine wiper, fireman, brakeman, conductor, and yard master and engine foreman.

Q. As Yard Master what do you do?

A. I have general supervision over the engines in the yards.

Q. Switch engines?

A. Yes, sir.

Q. You say you are foreman there now?

A. Yes, sir.

Q. How long have you been foreman there?

A. Since this full-crew act went into effect.

Q. As foreman what do you have charge of?

465 A. The switch engines.

Q. How many switch engines does the Cotton Belt use at Argenta?

A. Just one, a day.

Q. How many yards have you worked in as switchman in Arkansas,—as switch foreman?

A. That is the only yards.

Q. Will you please describe the yards of the Cotton Belt at Argenta?

A. We have two yards.

Q. Where are the yards at Argenta located?

A. Why the train yard—you might say we have three; the main yard we use for breaking up and making up trains.

Q. Take the main yards.

A. They are located in the end of town.

Q. Any crossings in it?

A. Yes, three crossings.

Q. Whereabouts are they located?

A. Two are located at the extreme east end of the road, and one of them at the extreme west end of the yards.

Q. In breaking up trains do you cross these crossings?

A. We cross one quite frequently.

Q. Now take the other yards: what are they?

A. What we call the freight house yards, right down at the foot of the Free Bridge where our freight house and passenger station is; we have four house tracks down there.

466 Q. You say you have been handling that business ever since the three-helper law went into effect.

A. Yes, sir, with the exception of the busy season, what we call the cotton season; then the road has four men and then I assume the title of yard master; but as soon as the business slackens they don't need the other man and I take charge of the engine again.

Q. I understand in the cotton season you have the extra man; now does the yard master go with the engine and work with it?

A. No, sir, only when the duties require him to go with it.

Q. From your experience and knowledge in having charge of the switching crews, I will ask you whether in your judgment the third

helper is necessary for the protection of crossings and doing your work in Argenta?

A. Absolutely not,—no, sir.

Q. Does it add anything to the protection of the crossings?

A. Not in particular; the extra helper we have now, he doesn't go about the crossings at all.

Q. What does he do?

A. He doesn't do much of anything, throws the switch and saves the foreman from doing it is about all he does.

Cross-examination.

By Mr. Jones:

Q. Since when have you given up your job as yard master, Mr. Hilton?

A. I believe I took charge of the engine the first of February.

467 Q. Don't you receive your orders as yard master now?

A. No, sir, I receive them as engine foreman.

Q. Aren't you known as the yard master over there?

A. No, sir, there's no yard master in Argenta; my title has been abolished altogether,—the title of yard master.

Q. What do you call the fourth man on the engine?

A. Simply call him the fourth man we were supposed to put on when the Full-Crew Switching Act went into effect.

Q. "We" put on? Do you consider the fourth man put on the switch engine effects you privately?

A. No, sir.

Q. Have you any interest in it at all?

A. None at all.

Q. What do you mean when you say the "fourth man that we were forced to put on"?

A. In compliance with the law he was put on.

Q. Do you call the fourth man the long field man?

A. No, call him the short field man.

Q. What is his duty?

A. Simply to throw switches once in a while.

Q. What is the duty of the long field man?

A. He stays out in the field and makes cuts.

Q. Don't you know that the long field man is the man that throws the switches?

A. No.

468 Q. Now isn't it a fact that on the switch engine where you have a cut of two or three cars and that is to be done at the same time, don't the long field man throw one switch and the short field man throw the other; isn't that a fact?

A. No, it isn't a fact. As I stated, the long field man doesn't go about the switch.

Q. Do you know the way they operate the switch crews on the Iron Mountain?

A. I have an idea.

Q. Did you ever see them operate, or see them switching on the Iron Mountain?

Q. Don't you know that is the way they are doing now?

A. I don't know what they are doing; I haven't been over there in two or three months; all I know is what I am doing.

Q. Now did you ever know of such a thing as dropping a car?

A. Oh, yes; we drop them every day.

Q. Over public crossings?

A. Yes, sir.

Q. You do that, do you?

A. Yes, sir.

Q. Kindly explain, Mr. Hilton, how you perform that work with a foreman and two helpers?

A. We put one man on the engine, and cut the car, and one man will ride the car after it's cut.

Q. Place a man on the engine?

A. On the foot board of the engine?

469 Q. Who would ride the car?

A. The short field man.

Q. Who would guard the crossing?

A. The man that throwed the switch, the foreman.

Q. The switch is not always on the crossing, is it?

A. In our yards they are, yes.

Q. If that switch was a half a block from the crossing?

A. They are not, in our yards.

Q. Do you know how they are in the Iron Mountain yards?

A. I don't know how they are in the Iron Mountain Yards.

Q. Do you know on the Rock Island?

A. I don't know on the Rock Island.

Q. All the switches on the Cotton Belt are right on the crossings?

A. Where I made the drop of the cars, yes.

Q. Don't you make a drop of the cars because it is absolutely necessary and you can't get them there any other way?

A. No, sir, there's not a track in our yards that I couldn't obviate dropping cars at all.

Q. Why do you drop them?

A. For convenience and quickness.

Q. To save time?

A. To save time.

Q. Now there are tracks where you can't get a car up that track, up any other way without dropping it, or without using a lot of extra time?

A. Not without a lot of extra time, no.

470 Q. Do the rules require you to drop them?

A. We simply do that for our own convenience, to save work.

Q. To save time?

A. To save time, yes, sir.

Q. Do you ever push cars around and over crossings?

A. Yes, sir.

- Q. You have some bad curves there don't you?
 A. We have one curve in the yards.
 Q. Where is that?
 A. The curve on the lead.
 Q. How close is that curve to the passenger depot?
 A. About twenty blocks.
 Q. Where is the yard office?
 A. The yard office is east—in East Argenta about twenty blocks from Main Street.
 Q. What is the distance from the yard office to the public crossing?
 A. The yard office is right on the crossing.
 Q. Don't that yard office obstruct the view of the public at that crossing?
 A. To some extent going one way.
 Q. Don't the yard office at Argenta obstruct the view of the train men riding these cars?
 A. No, sir.
 Q. Don't that curve have any effect on the signals?
 A. The curve is too far away from the yard office for the yard office to have any effect as far as signals are concerned.
 471 Q. If you are pushing a long string of cars around that curve, don't the yard office come between the man ahead, on the head end, and the man back?
 A. Yes, sir.
 Q. And it obstructs his view?
 A. Yes, but we have a man in the middle to obviate that?
 Q. You do now when you have the third man?
 A. No, sir, we did that before the third man was used.
 Q. How many cars do you push around that curve?
 A. We have pushed as many as forty.
 Q. The number of men you use depends on the number of cars?
 A. No, sir.
 Q. Could you transmit signals with forty cars as same as you can with ten?
 A. Yes, sir.
 Q. Can you flag out with as many cars?
 A. If you are flagging out it wouldn't admit of the handling of so many cars.
 Q. It makes a difference?
 A. Yes, sir.
 Q. Haven't you a condition in those yards, in order to get the cars in one track you have to push them in?
 A. Yes, we pull them out and push them in.
 Q. Tracks with one entrance you have to push them in?
 A. We push them in and pull them out.
 Q. Do you ever do such a thing as to kick a car across a public crossing?
 A. Yes, sir, once in a while.

472 Redirect examination.

By Mr. Kinsworthy:

Q. You say you have kicked cars across crossings; now would the crossings be protected in any way when you did that?

A. There'd always be a switchman about them.

Q. Did you have plenty of men to do that before you had the third man?

A. We had plenty of men, on the average number of cars we handled, you might say not over eight or ten, that is the average number, and we usually have that down to five.

Witness excused.

473

Testimony of M. O. Gay, Recalled.

M. O. GAY, being recalled for further examination by the defendant, testified as follows:

Direct examination.

Mr. Kinsworthy: The reason I am putting Mr. Gay on is I intended to put Mr. Copley on but he has been called away on important business at Memphis, and what I wanted to prove by Mr. Copley I want to prove by this witness.

The Court: This is the same witness you've had on the stand before, but he is called on new matter?

Mr. Kinsworthy: Yes.

By Mr. Kinsworthy:

Q. Mr. Gay are you familiar with the yards of the Rock Island in Arkansas, in the cities of the first and second class?

A. Yes, sir.

Q. How did you get familiar with them?

A. In my position as train master, and for the larger part of the last three years I have had either direct or indirect charge of all the yards for the Rock Island in an official capacity.

Q. Was it your duty to inspect these yards?

A. Yes.

Q. Have you inspected them?

A. Yes, sir.

Q. How many places have you on the Rock Island where you had to use the third man under the law?

A. Little Rock terminal—

Q. Commence on your road from Oklahoma?

474 A. Booneville, Biddle, Little Rock, Argenta, Brinkley and El Dorado.

Q. Do you have to use the third man at Camden, or do you have to have a switch crew there?

A. No.

Q. Have you a switching crew at Clarendon?

A. We don't run to Clarendon; the Cotton Belt is there.

Q. Do you know how many switching crews you have at Biddle and Argenta combined?

A. We are working eleven or twelve at this time.

By the Court:

Q. Biddle is not a city of the second class?

Mr. Kinsworthy: I think it is in the city limits, and our engines go in and out of the terminal.

By the Court:

Q. How close to the corporate limits is Biddle?

A. I am not sure but what — is included within the limits; if not it is just outside.

By Mr. Kinsworthy:

Q. Now take the engines doing switching at Biddle; they also switch cars from there into Little Rock?

A. Certain times of the day, yes, sir; and for that reason we comply with the law.

Q. Now take Booneville; how many engines do you use there?

A. We are working a good part of the time—we work at Booneville with two switch engines.

Q. At Brinkley?

475 A. We work with one switch engine at Brinkley.

Q. How many at El Dorado?

A. We work two and three at El Dorado.

Q. What additional expense has the Rock Island been put to on account of the third helper being added to each engine in these cities you speak of?

Mr. Jones: If you know?

Mr. Kinsworthy: Yes, if you know?

A. I know by checking the records, the records of the money that has been spent.

The Court: You may answer the question.

A. We figure \$26,650.00 a year.

By Mr. Kinsworthy:

Q. Can you give me a description of the yard at Booneville, about how it is situated?

A. At Booneville, the working yards are west of what is called, I believe, the thoroughfare—the main thoroughfare, and it is largely between streets that are not open. There is, however, four, as I remember, crossings in Booneville; what I mean by that, there's four open streets.

Q. Four streets over which people travel?

A. Yes, and which these switch engines sometimes pass over during the day—move over sometimes during the day; but a larger part of the switching at Booneville is done in the freight yards where they don't have to or are not compelled to go over the crossings but a very few times.

Q. Do you know the average number of cars that you
476 handle daily at Booneville, with the switch engine I mean?

A. The average number of cars handled at Booneville is about 8,000—I mean in and out.

Q. You mean a year?

A. I mean the monthly average.

Q. I mean a day how many?

A. I could say the switch engines handle over the street crossings—

Mr. Jones: Just answer from your knowledge.

Mr. Kinsworthy: If you can, tell me about the average number of cars handled in Booneville by the switch engines a day, if you can?

A. My best judgment is about 150 cars a day.

Mr. Jackson: We object to that question; Mr. Gay as I understand it, has never been official on the west end.

The Witness: Yes, I handled the west end.

Q. What was your duty?

A. As train master, I had direct charge of the trainmen as inspector of transportation for the General Manager; I was connected with it. I've been connected with it in two or three different capacities.

Q. As Inspector of Transportation for the General Manager. That wouldn't out you in touch with the yards as general yard master?

A. I handled it as train master.

By Mr. Kinsworthy:

Q. Now you handle about 150 cars at Booneville daily?

A. Yes, sir.

477 Q. If you can, tell me what per cent of these would be handled without going across crossings?

A. I don't believe we handle over fifty cars a day over the crossings at Booneville with the switch engines.

Q. From your knowledge and experience in switching, does the third man add anything to the protection of the public in Booneville in switching cars across crossings?

A. Not from my judgment; it does not.

Q. Take the towns of Little Rock and Biddle, I believe is the next place; describe how your yard is located at Biddle?

A. At Biddle our main yards are located between what we call Sweet Home Pike and Arch Street, and it is not necessary but a few times a day for the switch engines to cross over these crossings.

Mr. Jones: We are going to object and ask that this testimony be stricken from the record. There is no testimony showing that Biddle is a city of the second class, and there's no testimony showing that it is within the city limits of Little Rock. And as far as the testimony as to these crossings is concerned, we are going to object to that.

Mr. Kinsworthy: I thought we had gone over that.

The Court: I thought so too.

Mr. Jones: I am not objecting to this for the reason that Biddle is not a city of the second class.

The Court: All right; save your exceptions.

Mr. Jones: I save my exceptions.

478 By Mr. Kinsworthy:

Q. How is Biddle located relative to Little Rock, Mr. Gay?

A. It is about two miles and a half west of what we call the Little Rock passenger station of the Rock Island.

Q. The passenger station?

A. The passenger station.

Q. How are your yards in Little Rock, proper, located?

A. The yards within the city limits proper of course is divided more or less, but we only have what is considered three open crossings within the city limits of Little Rock proper on the main line. One of them is covered by a gate, and one of them the larger part of the traffic goes underneath a viaduct.

Q. You have what is called an alley track in Little Rock, haven't you?

A. Yes, sir.

Q. Describe to the Court how that runs?

A. The alley track at Little Rock is run on the outside of what we call our team tracks. We have a ladder of team tracks and the alley track goes on the outside of these tracks and serves the industries up to near Main Street?

The Court: That is on this side from the depot?

A. Yes, sir. It goes from the depot or up to Main Street. Take the cars that are switched up this street, most of them are pushed in when placed in the industries,—not all of them but most of them, they are pulled out of these industries, and it is the instructions and the rules of the Railway Company to our switchmen there, and they comply with them, that there should be a man to go in front of this train in going up the alley track, or to ride the first car.

479 Q. Mr. Gay when you go up that alley track in pushing cars, how fast do you go?

A. As a general thing, about as fast as a man can walk. I have gone up there on several occasions and walked along, and the men didn't know that I was along, and they were going up there just about as fast as I could walk.

Q. I understand your instructions in pushing cars up that alley track is for a man to walk along in front, when pushing them in there?

A. Yes, sir, most of the time they do that.

Q. Would the third helper be any help in walking along there?

A. I've tried for the last thirty days to find where we're getting any value out of that third helper, but I haven't found out yet.

Q. Is he any protection to the public in any way, that is, the third man?

A. No, the third man doesn't cover either end of the cuts which they handle.

Q. Now Mr. Gay, in doing your switching and handling your cars in the City of Little Rock, does the third helper add anything to the protection of the public crossings?

A. No, sir, he does not. I've had more or less official connection with the Little Rock terminals for the last three years, 480 in and out of it as train master and supervisor of transportation, and I should say he does not.

Q. You have had charge of it before the third man was put on?

A. Yes, sir, I have had charge of all the terminals.

Q. We will go now to Brinkley: How many engines do you keep at Brinkley?

A. One switch engine most of the time.

Q. Do you know the number of cars you handle at Brinkley?

A. About the same number of cars are handled at Brinkley as there is at Booneville. There is about the same business there, but the switching there—there is more of the business handled at Brinkley by the road engines than there is at Booneville.

Q. Now in crossing the crossings there how are the yards located there, the industry tracks and yard tracks where the switching is done?

A. The switching at Brinkley is rather more or less distributed over the different tracks, but the train yards proper is between open thoroughfares; but it is only necessary, I believe, in one place, to cut the cars in the main train yards, and we have I believe four open crossings on the main line.

Q. Are any crossings at Brinkley protected in any way?

A. I don't believe they are.

Q. Take Brinkley, for instance; can you give me the average number of cars that is handled daily by the switch engine?

481 A. I should say 100 cars a day.

Q. What would be the average number handled to the industries?

A. There'd be about a 33 $\frac{1}{3}$ %, thirty three and a third per cent would be handled to the industries in Brinkley, I should say.

Q. Thirty-three and a third per cent, you say?

A. Yes, sir; a larger per cent of the number of cars handled there are for the unloading tracks and the freight house, at Brinkley.

Q. Going to the team tracks, you mean, and the freight house?

A. Yes, sir.

Q. Now from your experience and from your knowledge of the yards at Brinkley, does the third man add anything—does the third helper add anything to the protection of the public at crossings?

A. I had Brinkley—charge of Brinkley yards—before and after the law went into effect, and it has been my experience it has not; on the contrary, we've had more accidents since we put on the extra man than we had before, as the record so shows.

Q. Does the third man assist you in any way in expediting your business at Brinkley?

A. No, sir, he does not; he has not expedited the business any there.

Q. Take El Dorado: Please describe how your yards are located at El Dorado?

482 A. Our yards at El Dorado, so far as industrial work is concerned, the yards proper are located quite a distance from the main line proper; that is, west of our passenger station. And I don't know of any yard, from my observation, where there is so little chance for accidents over crossings as I find at El Dorado; and in my connection with the road I have put a great deal of time there as an inspector. The train yard is located west of what is called the Main Street crossing there.

Q. Where is the principal part of your switching done, in the main yards, or industrial yards?

A. Nearly all of it is done in the main yards of El Dorado, or west of the transfer as it's generally used.

Q. In doing switching in the main yards, would you cross the thoroughfares that are generally used in El Dorado?

A. How is that?

Q. In doing switching in the main yards, would you switch up and down and across the thoroughfares that are generally used at El Dorado?

A. My recollection of it is only a few times does the switch engine—is it necessary for the switch engine to go over the crossings generally used by the public.

Q. Could you give me an estimate of the number of cars handled by the switch engine per day at El Dorado?

A. The switching at El Dorado runs larger than it does at Booneville and Brinkley, and it is necessary for them to use more switch engines. There is a large part of the time I should say that they handle from 150 to 175 cars a day.

483 Q. What per cent of these cars are industrial cars, that you have to switch to the industries?

A. There is not a very large per cent that goes to the industries; quite a few go to the freight house, but a larger part of them are through cars and they are handled in the main yards.

Q. Could you give me the estimate of the average length of a cut of cars which would be handled by a switch engine at El Dorado to the industrial tracks?

A. I don't believe it would average over four or five cars.

Q. Take the City of El Dorado as your yards are located: does the additional helper add anything to the protection of the public at crossings?

A. I can't see how it would; I can't figure how it does.

Q. Does he add anything to the efficiency of your crew in doing the work?

A. I do not understand that it does.

Cross-examination.

By Mr. Jackson:

Q. Mr. Gay, what did you say it would cost to operate this third helper in Arkansas on the Rock Island?

- A. I figure that it would cost something like \$25,000 a year.
Q. \$25,000; is that what you said before?
A. Yes, a little over that.
Q. Didn't you say \$26,500?
A. No, I said about \$25,000.
Q. How many cars did you say they handle there at Brinkley?
A. I should say about a hundred cars a day.
484 Q. Is that what you said before?
A. That is what I said the switch engine would handle.
Q. Didn't you say about 150?
A. Not by the switch engine.
Q. You didn't say that?
A. He didn't ask me that; that was in reference to the other question.
Q. Didn't you say you handled 150 cars over a crossing?
A. I should say we handle about 100 to 75.
Q. Is that what you said before?
A. If that was the question, yes, sir.
Q. That what you said?
A. Yes, sir.
Q. Didn't you say you handled fifty cars over the crossing before?
A. I said 50 to 100, I believe.
Q. The fact is, aren't you basing your testimony on your idea and not from facts?
A. I know the number of cars handled, about as accurate as any man does in Brinkley.
Q. Do they handle each day the same number of cars at Brinkley?
A. No, you've got to take an average.
Q. How many crossings are there in Booneville?
A. In Booneville on the main line there is four open crossings.
Q. Do you ever kick any cars over the public crossings at Booneville?
A. I have never seen them kick any cars over an open
485 crossing at Booneville.
Q. You never saw that?
A. I never did.
Q. How many crossings across the industrial tracks?
A. In Booneville there is probably four open crossings.
Q. How many tracks in Booneville across the public crossings—
industrial tracks and merchandise tracks?
A. I am speaking of the main line.
Q. I am speaking of the whole yard. How many crossings are there in the Booneville yards?
A. I can get that information for you by referring to the blue prints.
Q. Isn't there a great deal more than four crossings across the industrial tracks?
A. There's some more, yes.
Q. How long were you train master on the east end?
A. For a large part of three years.

Q. What were you doing when you were not train master?

A. When I wasn't train master?

Q. Yes.

A. I was working for the General Manager as Inspector of Transportation.

Q. How long have you been working for him in that capacity?

A. I worked on two different occasions, for two different general managers, since I have been in Arkansas, probably something like eight or nine months all-told.

Q. Did you ever have a job of switching cars in Arkansas?

A. Yes, sir, I have.

486 Q. Where?

A. I put in about a month at Hulbert.

Q. I am talking about cities of the first and second class?

A. No.

Q. Did your duties as inspector require you to inspect yards of the cities of the first and second class?

A. Yes, I inspected all the various yards.

Q. Was that under your jurisdiction, the supervision of yards?

A. Yes, sir, it was.

Q. In what way?

A. In this way. The supervision and inspection you make, you go there with the intention of finding out what the switchmen are doing and the necessity of the work at that place.

Q. Just what duties would the inspector have pertaining to the yards; just explain that to the court please?

A. To advise with the yard master and check up his mode of doing business and suggest to him where he could make improvements and give him the benefit of your experience.

Q. How many cars did you handle at El Dorado a day?

A. I say in the El Dorado yards they handle a few more cars per month than they do at Booneville and Brinkley, but is more of them handled in the train yards.

Q. How many did you say were handled per day at El Dorado?

A. The switch engines handle about 150 of them.

Q. What did you say before?

487 A. That is my recollection of what I said before.

Q. How many crossings at El Dorado? How many tracks have you got at El Dorado, main line and spur tracks—all spur tracks and all the tracks in your yards; how many crossings are there.

A. I couldn't remember but four crossings that you've got to cross to get to the freight house, or anything else.

Q. How many tracks do these four streets run across?

A. At one place the street would cover two crossings, I believe, but they are quite a little ways apart.

Q. How many streets go across the spur tracks, whether they are used or not as street crossings?

A. I don't know that I get your question.

Q. You said a while ago that you've got tracks that you daily use over four streets.

A. I know there's a large part of the traffic that moves over about one of the streets.

Q. Were the others generally used then?

A. At our station a large part of the traffic will go over a certain crossing; the others are more or less used.

Q. How many crossings at Brinkley that you switch cars over?—spur tracks, main line and all?

A. The switch engine will cover six crossings; there's only four on the main line.

Q. How many crossings of tracks on all tracks?

A. I don't think there is but six open crossings at Brinkley on all our tracks.

488 Q. Don't the Cotton Belt cross right there at the depot?

A. How is that?

Q. Don't they switch cars on Main Street at the depot there?

A. Main Street is one of the streets we cross there; it is just this side, or at the extreme west end of our yards.

Q. The Cotton Belt crosses there also, or you cross the Cotton Belt road right at the depot?

A. No, sir.

Q. You don't cross the Cotton Belt at the depot?

A. At the depot?—Yes. I thought you said Main Street.

Q. Would you cross the Iron Mountain there?

A. The Iron Mountain or the Midland Valley,—I mean the Arkansas Midland stops there. They switch over our crossings there more or less.

Q. What did you say about the conditions in Argenta?—How many crossings did you say in the yards from the Cotton Oil Mills up to Main Street?

A. Counsel didn't ask me anything about Argenta.

Q. In going from Argenta yards, leading up to the Arkansas Cotton Oil Mill, are you familiar with the tracks in there?

A. Yes, but not as much as I expect to be when I am longer with the terminals.

Q. How far can you see a signal around the elevator?

A. I should say five or six cars there.

Q. Don't you switch cars from the elevator right over the Iron Mountain tracks and Fourth Street?

Mr. Kin-worthy: You mean across them?

489 Mr. Jackson: Yes.

A. In the switch movements we cross the railroad crossing.

Q. When you switch to the elevator you are switching over the crossing of the Iron Mountain tracks at Fourth Street and across Magnolia Street and across Sixth Street?

A. Well, there are a few times they do, but it is very limited.

Q. Limited? How many?

A. Very few.

Q. You haven't been there—You are not familiar with the switching at that point?

A. I am more or less familiar.

Q. What do you mean by "few"?

A. A few; there wouldn't be over eight or ten cars.

Q. When you shove in beyond the elevator and shove out under

the viaduct and into the Arkansas Cotton Oil Company's mill and into Main Street, how far can you see signals there?

A. My recollection is, five or six cars, at the closest place.

Q. How many cars do you generally handle in there?

A. Well, the switch engines are not handling as much as I wish they would.

Q. How many do you find that they handle?

A. I've never found that they've handled more than five or six cars, since I've been in charge of the terminal.

Q. Isn't it a fact that they go in there and switch cars
490 at Main Street and at the A. C. O. track, and kick cars across those crossings?

A. Not since I've been acquainted with the terminal.

Q. Don't they do that now, don't they kick cars over the A. C. O. track; and over Main Street there now?

A. I've never seen it.

Q. Have you been there when they were doing switching?

A. Yes, sir.

Q. You have not seen them kick cars over these streets?

A. No, sir.

Q. When have you been down there?

A. I was there last week?

Q. What were they doing?

A. They were going to and from.

Q. To and from where?

A. From the A. C. O. switching in that vicinity.

Q. Did you see them switch cars into the A. C. O. that day?

A. I don't believe I did.

Q. They didn't switch that that day then?

A. I don't believe they did.

Q. Do you know what the various tracks in Argenta are used for?

A. They are industry tracks, and we have the main yards there; the larger part of our tracks in Argenta now are used for storage purposes.

Q. Isn't your main yards, or terminals, at Biddle?

A. Yes, sir.

Q. They're not at Argenta?

491 A. I said the main yards in Argenta are now used for storage purpose, and had order cars, and timber, that we are storing there.

Q. At the time you speak of that alley track, when you were there as official of the Rock Island, was that before this whole crew switching law became effective?

A. I have been train master for eight years, yes, sir.

Q. Did you know anything about the operations of that city or depot engine before this law went into effect?

A. Did I?

Q. Yes?

A. Oh, yes.

Q. Do you remember any of the crew that were on that engine before this law went into effect?

A. Yes, sir.

Q. What are the names of the regular crew that was on that engine before this law went into effect?

A. They have been changed about——

Q. I know, but who were they?

A. Ingram was there before and after this law went into effect.

Q. Gossett, was he there?

A. He has done some work.

Q. Griffin?

A. Griffin is there now and was before.

Q. Wilkerson?

A. Wilkerson was there part of the time.

Q. He was there and had a regular job.

A. Yes, he had a regular job; there's two Wilkersons.

492 Q. Yes, I know there's two Wilkersons, but one of the Wilkersons will do—Now isn't it a fact that on this particular engine you had an engineer, a fireman, a foreman and three helpers before this law went into effect, on this engine doing this city work?

A. I don't remember just now; I do remember seeing four men with that crew.

Q. That is a foreman and three helpers?

A. I have seen four men with that crew.

Q. How many crossings do you have in Little Rock?

A. Little Rock Proper.

Q. Yes, state how many crossings there are in Little Rock proper?

A. I think the switch engines will cross in Little Rock proper—I think they will cross twelve open crossings; in other words they may in their duties, in the work they do they may be called upon to cover twelve open crossings.

Q. Isn't it a fact that there are about twelve crossings from the passenger depot up to the alley track where you do your city work?

A. No, sir, there's not.

Q. What streets do you cross with your alley track?

A. (Referring to blue print.) Rector, Ferry, Sherman, Commerce, Rock, Cumberland and Scott.

Mr. Jackson: Where is that track? Let us see it on the blue print.

Q. Is that on a straight or crooked track over these crossings?

493 A. I don't remember any crossings where the track is not nearly straight when it crosses the street, and the blue print will show.

Q. How about the buildings; are they close to alley track?

A. They are back far enough to protect the cars going in there. But a large part of our industrial work is not on the alley track. They are on their own private spur tracks, off the alley track, which makes them a nice clear distance from our track.

Q. Any of these tracks up the alleys or across the streets at public crossings, are these crossings protected by flagmen?

A. No, sir, I've never found it necessary.

Q. How is that?

A. I don't find it necessary to do that.

Q. Why?

A. Because, for one reason, the instructions there to the switchmen, as I have stated,—and those instructions must be lived up to—and again the larger part of that switching in that alley track must be done at night when there is nobody moving around.

Q. You mean to say there is nobody moving around Little Rock at night?

A. We are talking about the alley track.

Q. Yes, that is what I am talking about?

A. No, sir, not very much.

Q. Don't you cross Byrd street?

A. Byrd street is the crossing over which we put the crossing viaduct, to keep pedestrians off the track.

494 Q. Don't you have pedestrians to go underneath the viaduct and get on the track?

A. Trespassers go every where.

Q. Don't wagons drive down Byrd street?

A. How is that?

Q. Don't wagons go down Byrd street, along to the team track?

A. Teamsters go on all the streets to get to the depot.

Q. I am not talking about going down to the cars, I'm talking about going down Byrd street.

A. I'll have to locate Byrd street. It is my recollection that this is one of the streets that is closed.

(Referring to blue print.)

Q. Do you cross Byrd street?

A. I don't find any open crossing at Byrd street.

Q. Is there any tracks there on Byrd street? (Referring to blue print).

Mr. Jones: Don't you know the location, Mr. Gay, without referring to that?

A. I remember Byrd street, but it don't show on there.

Q. What about Collins?

A. Sollege street?

Q. No, Collins.

A. I don't find any Collins.

Q. What about Ferry?

A. We named Ferry as one having an open crossing, and Commerce and Sherman also.

495 Q. Isn't there a street going up this alley track—the streets going up the alley track, aren't these blind crossings there at these street crossings?

A. No, sir.

Q. They are not?

A. There are no blind crossings, what you term "blind crossings"; as an employee or an experienced railroad man you wouldn't call them blind crossings.

Q. What do you call a blind crossing? Isn't it where the buildings are up against the track?

A. We haven't any buildings up against the track; there is a law that keeps that away—it keeps the buildings away from the track.

Q. There is a law?

A. Yes, of the railroads in the first place.

Q. Is it being violated at any place?

A. I don't know of any place. We've had people try to violate it, and it takes quite a little expense to get them back.

Q. Commencing at Fifth street and going around and crossing at Rock, you only have twelve crossings that your tracks come in contact with?

A. How is that?

Q. Well, we will say commencing at your depot at Little Rock, and go over all the tracks that your engine comes in contact with—you say your engine would only cross twelve crossings?

Mr. Kinsworthy: That is unfair, and I object to the question.

By Mr. Jackson:

496 Q. Your engines come in contact with how many crossings?—What about Sixth street? Don't your passenger and freight trains switching towards Biddle, don't they switch right over Sixth Street?

A. The larger part, I would say, of the passenger trains do—No, I will qualify that: I don't believe it is necessary with the passenger trains, for the engines to touch Sixth Street. They go down near Sixth Street, but a large part of the traffic goes under the bridge at Sixth Street there.

Q. They go over the bridge also, don't they?—Have you a driveway under there?

A. Yes, sir, we have a driveway under there.

Q. Isn't it a fact in bad weather that it becomes impassable under there and the teams have to go over your tracks?

A. I have not found that so.

Q. At Seventh Street; how about that?

A. Yes, and so is Eighth. Ninth is the next open crossing?

Q. What is the next street out towards Biddle?

A. Fifteenth street, and we have a flagman there.

Q. At Fifteenth?

A. Yes, sir, an old-timer.

Q. You are an Official of the Rock Island?

A. I presume so.

Q. What department?

A. General Agent of the Rock Island at Little Rock, now; that is my title.

Witness excused.

497

Testimony of B. T. Kehl.

B. T. KEHL, of lawful age, being duly sworn and examined as a switchman on the part of defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. B. T. Kehl.

Q. Where do you live, Mr. Kehl?

A. Jonesboro, Arkansas.

Q. What is your business?

A. General Yard Master for the St. Louis Southwestern Railway Company.

Q. What experience have you had in railroad business?

A. Twenty-two years.

Q. During your twenty-two years' experience, what work have you done on the railroad?

A. Brakeman, conductor, yard master, switchman and engine foreman.

Q. How long have you been yard master at Jonesboro, for the Cotton Belt?

A. Twelve years.

Q. Been at that one town twelve years in the same position?

A. Yes, sir.

Q. In the position you hold there what relation do you have with the switching?

A. I have general supervision of the movement of all trains and cars in and about and through Jonesboro.

Q. How many switch engines has the Cotton Belt working
498 there?

A. One day and one night.

Q. During your experience,—during all the years you have had charge of the business there, how many men have you had with your switch engine, prior to the law of 1913, prior to the time it went into effect?

A. We had an engine foreman and two switchmen.

Q. How many do you have now?

A. Have an engine foreman and three switchmen.

Q. Mr. Kehl, what is the difference in the work, if any, with the additional man?

A. I don't believe I understand your question.

Q. Do you get any more work with the additional man?

A. No, sir.

Q. Do you get as much?

A. Well, we get about—just the same I guess.

Q. Well, does the additional man add anything to the efficiency of the crew?

A. Not any that I can see.

Q. In the class of work you have?

A. No, sir, not any.

Q. Does this additional man, from your experience, add anything to the protection of the public in doing switching at Jonesboro at public crossings?

A. No, sir.

Cross-examination.

By Mr. Jones:

Q. How many public crossings are there in Jonesboro, Mr. Kehl?

499 Mr. Kinsworthy: That is not cross-examination, and they went over all that with another witness.

By Mr. Jones:

Q. (continued). Including spur tracks and the main line?

Mr. Kinsworthy: Your Honor, we put this witness on the stand and asked him this one question, and we didn't go into this, and this is no cross-examination, and if they are going into it why they are making him their own witness.

The Court: All right.

By Mr. Jones:

Q. How many crossings in Jonesboro, public crossings where the road crosses streets?

A. Four.

Q. Does that include the industry tracks and spur tracks?

A. Yes, sir.

Q. And the main line?

A. Yes, sir.

Q. How many tracks are there across the four crossings?

A. A different number of tracks; on one street we have seven, and on another we have three.

Q. Now the number of men necessary on any given engine at any point is determined by the location of the tracks—the geographical location, the lay of the ground, the amount of business to do at the certain point, is it not, Mr. Kehl?

A. Well, no, I don't think so.

Q. Well, will you tell me why it is, when they have a rush at some of these places, where they have a large amount of business, they employ the third man?

500 A. I don't know anything about that part of it; we don't do it at Jonesboro.

Q. You don't think the conditions of the traffic or the amount of business would have anything to do with the amount of men necessary?

A. No, sir.

Witness excused.

501

Testimony of E. Richards.

E. RICHARDS, being first duly sworn, and being called in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. E. Richards.

Q. Where do you live, Mr. Richards?

A. Pine Bluff.

Q. What is your business?

A. Superintendent of the Cotton Belt.

Q. How long have you been Superintendent for that road at Pine Bluff?

A. Just a little over a year.

Q. How were you engaged prior to that time?

A. Well I have had about thirty years with the Cotton Belt in the capacity of Operator, Train Dispatcher, Chief Dispatcher, Train Master, Assistant Superintendent and Superintendent.

Q. Then prior to the time you were Superintendent——

A. About six years prior to that I was Assistant Superintendent at Pine Bluff.

Q. Did you ever have any experience as a switchman?

A. I switched some during the A. R. U. trouble.

Q. Then you have been at Pine Bluff and in the vicinity in connection with the Cotton Belt all told about how long?

502 A. Well over twenty years.

A. At Pine Bluff?

A. At Pine Bluff, yes, sir; fourteen years at one time and then about six or seven years at another.

Q. During that fourteen years what was your duties at Pine Bluff?

A. Train Dispatcher, Chief Dispatcher, and Train Master about eight years, and Assistant Superintendent about six years.

Q. As Train Master what was your duties?

A. General supervision of the yards and train service.

Q. As Train Master did the switching crews come under your control?

A. Yes, sir.

Q. Who had control under you?

A. Well we had the Yard Master.

Q. He reported to you?

A. He reported to me.

Q. Well during that time did you have occasion to observe how switching was done?

A. Yes, sir, very frequently. I spent most of my time trying to show them how to do it the cheapest and quickest way.

Q. Showing them how it ought to be done?

A. Yes, sir.

Q. Then you are familiar with the manner of doing switching in Arkansas?

A. Yes, sir.

503 Q. What does your territory cover, Mr. Richards?

A. It covers all the lines in Louisiana, Arkansas, Missouri, all joint lines in Illinois, all lines north of the Illinois lines.

Q. How many cities have you in Arkansas of the first and second class where under the law that is being contested you have to use a third helper in the switching crew?

A. Four.

Q. Name them?

A. Jonesboro, Argenta, Pine Bluff and Texarkana.

Q. Begin with Texarkana. How are your yards located at Texarkana?

A. We have a train yard there that lies almost to itself. We make and break trains in the yard; and then we have a team and industrial track lying adjacent to it.

Q. Taking the train track at Texarkana please describe it as to grade and crossings?

A. Well the grade is practically level in the train yard at Texarkana except at the extreme north end. There is an ascending grade or a descending grade going into the yards, but there is only two little industries located up there, a brick yard and an Oil Company; that part isn't switched over once or twice a week; so that the yard is practically level.

Q. Now as to crossings in that yard?

A. Now in the train yard there is no crossings at all, but north of the north lead there are two crossings, but they are outside of the lead and they are not passed over by these switching crews more than possibly twice in 24 hours. The Texarkana yard is, without crossings essentially.

504 Q. What per cent of the cars handled by a switch engine in Texarkana would be handled without going over crossings?

A. Practically the entire business would be handled without going over crossings. We have a viaduct over our main yard you understand, a very expensive viaduct; all the travel goes over that.

Q. Now the industrial tracks in Texarkana—do you know how many you have outside of the main yards?

A. Well I don't know the exact number, but probably not over three.

Q. How many cars on an average would the engine handle in serving these industrial tracks?

A. I suppose a maximum of about fifteen cars and an average of about four.

Q. How many unprotected crossings would they go over?

A. It wouldn't go over any unprotected crossings.

Q. How many crossings would they pass there, if any?

A. There is no crossings on those tracks.

Q. Those industrial tracks?

A. No, sir.

Q. Now in handling your business there is a third switchman necessary or helper for the public safety?

A. Absolutely not.

505 Q. Does it add anything to the efficiency of your crew?

A. No, sir.

Q. Now we will pass on to Pine Bluff. Will you please describe the location of your yard at Pine Bluff?

A. At Pine Bluff we have our large train yard in the Eastern part of the City, and it lies principally outside of the City limits; just a portion of the west end of the yard is in the City limits, and there are no crossings in that yard in the City limits. We have some industrial tracks further west up town.

Q. What per cent of the switching is done in your main yard?

A. Well I think 90 per cent of it; probably not over 10 per cent of the business in Pine Bluff is industrial business.

Q. From your long experience and observation in Pine Bluff in charge of those yards, does the third helper add anything to the protection of the public in switching over public crossings in Pine Bluff?

A. Not in any sense whatever, absolutely not.

Q. Does he add anything to the efficiency of the crew in doing the switching over these crossings?

A. No, sir, he does not.

Q. Now, Mr. Richards, are you familiar with the yards at Argenta and Jonesboro?

A. Yes, sir.

Q. You laid off that yard at Argenta didn't you practically?

506 A. Yes, sir, practically; I am very familiar with both of them.

Q. Now in doing your work, the switch engines doing the work at Argenta and at Jonesboro, does the third helper add anything to the public safety in switching or operating cars over public crossings at either Jonesboro or Argenta?

A. Absolutely not. I should say that the additional helper just about has the same relation as the fifth wheel to a wagon.

Q. What additional expense is your road put to in Arkansas on account of this law requiring you to have the third helper?

A. Our actual expense by reason of that law is \$11,292.00 a year; that is our actual expense.

Q. Mr. Richards, you say your territory goes into how many States?

A. Louisiana, Arkansas, Missouri and Illinois and Tennessee.

Q. What towns of any size do you go into in Louisiana?

A. Shreveport.

Q. What towns in Illinois?

A. Well I have no direct control over anything in Illinois. We have a joint arrangement; we use the yards at Illmo, Missouri for eight engines.

Q. How does that work at Illmo compare with that at Pine Bluff?

- 507 A. It is more than double that at Pine Bluff.
Q. Is it more than double any town you have in Arkansas?
A. Yes, sir.
Q. At Illmo, Missouri, and Shreveport, Louisiana, how many men do you use with a switching crew?
A. A foreman and two helpers.
Q. Do you find that all you need?
A. Yes, sir.
Q. Do you know of any law in any State outside of Arkansas where you are required to have the third helper?
A. Well I am not familiar——
Q. None that you know of?
A. None that I know of.

Cross-examination.

By Mr. Jones:

- Q. How long has it been since you switched a box car, Mr. Richards?
A. Well I never really served as a switchman you understand or drew salary as a switchman.
Q. How long has it been since you were a Train Master?
A. About two years.
Q. Now what did you say with reference to the crossings in the south yard at Pine Bluff?
A. I spoke of it as east and west; I suppose you mean west.
Q. Yes; employees in the shops pass over those crossings
508 do they not?
A. We have a fence around our shops at Pine Bluff with gates and entrances for the streets.
Q. You have steps up and over the fence have you not?
A. No, sir.
Q. How many crossings did you say you had in Pine Bluff that you switch over?
A. There is a total of thirty crossings in Pine Bluff through the entire length of the City, but there are probably thirteen or fifteen of those crossings that we don't switch over. We go over them when we are transferring from one point to another through the yard.
Q. Switch engines move over those thirty crossings every day.
A. No, there are seven of those crossings we don't go over at all in the middle or rather west end.
Q. What are those seven crossings in the west end?
A. From the Iron Mountain junction, from Sixth Avenue on southwest.
Q. Just name the crossings?
A. Well I think they are numerical streets, possibly begins at Ninth and runs on to Sixteenth or Seventeenth.
Q. Have you a crossing at Ninth Street?
A. Without reference to the blue print I cannot tell exactly about it, but I have got the blue prints here to offer in evidence.

509 Q. The crossing that you have reference to that you didn't switch over was that 7th Street and 9th Street included?

A. We don't switch over anything beyond about 8th Street or 9th Street perhaps; they are outside of our yard limits.

Q. Now the crossings that you don't switch over are from about 7th Street on out—7th, 8th, 9th and so on?

A. Yes, in that vicinity.

Q. Now, Mr. Richards, aren't there thirty street crossings in the main yards or in the industrial tracks of Pine Bluff with our road that box cars are switched over every day?

A. Not switched over, I.O. They move over those crossings when they are moving from the main yard up into town. They move over all of the crossings that intervene between the business part of town and the main yard.

Q. When you said you had thirty street crossings, did you include that seven that you didn't switch over in the thirty?

A. Yes, sir.

Q. And that is 7th, 8th, 9th, along there?

A. I think it is about from 8th or 9th on.

Q. That is from 9th on out, like 10th and 11th?

A. Yes.

Q. What about Missouri Street, do you switch over that?

510 A. Missouri Street is the first street west of the west end of our train yard.

Q. What about the school children passing down that street?

A. Not any frequent travel on that street.

Q. School children go over that street do they not?

A. They possibly do to some extent. There is some travel over that street, but not to any great extent.

Q. What about Louisiana Street?

A. There is very little travel on those streets between Missouri and our freight station.

Q. Take from Missouri Street on up to Maple Street, how many street crossings intervene including the two Streets?

A. I cannot remember the location of Maple Street to tell you.

Q. Do you know where Cypress Street is?

A. Not without looking at the map.

Q. There is about 27 street crossings between those two streets including those two, is there not?

A. There is thirty all told in the entire town, but seven of those are west of our limits and only two very much travelled streets.

Q. Mr. Richards, isn't it a fact that there is thirty street crossings in Pine Bluff that your road runs over and that switching is done over, not including 7th, 8th, 9th and 10th or any of those?

511 A. No sir, it is not. We don't switch over all of those crossings. We simply move over them having a transfer from one place to another.

Q. Would you recognize a map of your roads in Pine Bluff?

A. Yes, sir.

Q. I will ask you to look at this and see if you can tell me what it is? (Handing a diagram to the witness).

A. I recognize the location here.

Q. I wish you would count those and see if there are not about thirty street crossings there?

A. I said there was thirty crossings in the city.

Q. The thirty crossings don't include seven street crossings that you say you don't switch over does it?

A. Yes, it does.

Q. Didn't you say that the ones that you didn't switch over that you counted as crossings with the thirty mentioned was 7th, 8th, 9th, 10th—

A. Yes, sir, I said that; that is correct.

Q. Show me where 9th Street is on that map?

A. It goes west from here (indicating). This is the end of the streets by name when we turn this way, this spur. (Indicating on the diagram).

Q. Now does that railroad cross every crossing that is shown on that map?

A. Yes, I think we do.

Q. Now as a matter of fact isn't there thirty crossings shown on that map not including 7th, 8th, 9th and 10th Streets?

512 A. No, I don't think so. There is only 25 crossings shown on this map.

Q. Name the crossings, Mr. Richards?

A. I don't know that that is absolutely correct. I have got a map here that is correct. Missouri, Louisiana, Tennessee, Texas, Georgia, Alabama, State, Main, Pine, Chestnut, Walnut, Olive, Laurel, Peach, —, Mulberry, Ash, — Now I don't think there is any crossing at Locust or Palm Streets. I am pretty well satisfied there is not.

Q. Don't your tracks pass right over Locust and Palm?

A. There is no crossing down at those two points is my remembrance.

Q. You are not certain whether your tracks pass over those streets at open crossings or not?

A. There is no open crossings at those points.

Q. There is an open crossing at 5th street is there not?

A. Yes.

Q. And at 4th street?

A. Yes.

Q. There is a crossing at 3rd?

A. There is no crossing at 3rd.

Q. How many crossings are shown on that map that you don't know whether you cross or not?

A. Well there is two that I don't think we cross, Locust or Palm; no open crossing at Locust or Palm.

Q. The rest of them do your tracks cross those crossings?

513 A. Probably Plum and Cedar.

Q. Well there is two that you are not aware whether they cross or not?

A. Well I am pretty certain we don't cross two of them.

Q. Now is the rest of the crossings correct?

A. I couldn't say absolutely unless I checked it up.

Q. You don't know then whether your tracks pass those streets or not?

A. Not without checking that map carefully; it looks al- right but I wouldn't say.

Q. You know the way your tracks run do you not?

A. Yes.

Q. Cannot you tell what streets they run across?

A. Yes.

Q. Do they run across——

A. They pass all of the streets between Missouri and this crossing on 6th Avenue.

Q. Don't your tracks make a curve between Locust and Palm and cross both streets?

A. It is my recollection our tracks make a curve there, but don't pass those streets. The street isn't open there; there is some property there occupied by the Bluff City Lumber Company that the street wasn't opened through.

Q. But the other of those crossings with the exception of those two you think are correct?

A. Practically so.

514 Q. This map as here shown shows thirty crossings, does it not, and all of them pass these public crossings with the possible exception of two?

A. Pass over them?

Q. That leaves 28 crossings shown on the map does it not?

A. No, that isn't correct. There is only 25 crossings as I understand shown on that map. There is only thirty crossings shown in the town.

Q. Now besides that map there is crossings at 7th Street are there?

A. I will have to get my map to say exactly the crossings there. They are not all open out there.

Q. How many crossings are there then between 7th Street and 11th Street that are not shown on this map?

A. There are seven crossings beyond—I think it is 8th Street.

Q. There are seven crossings from 8th Street on?

A. Yes.

Q. And those are the seven that you had reference to when you said seven of the crossings are not switched over?

A. Yes, that is approximately. I may not be correct as to 8th Street; but we can introduce my map.

Q. What did you state about your business at Illmo—did you state it was greater than your business at Pine Bluff or less?

A. Greater.

Q. How many men have you employed in your shops at Pine Bluff?

515 A. Mechanics you mean?

Q. Yes, sir, all told.

A. I wouldn't say.

Q. Can you give approximately the number?

A. Oh, I could guess at it I suppose.

Q. Well approximately how many men are employed there?

A. Well I don't know how many men are employed there.

Q. Now to get to their yards and get to their work the men have to walk down these streets do they not to the tracks?

A. Which streets?

Q. Well Missouri, Tennessee, Louisiana, some of them?

A. I don't know. They can go right down the streets that parallel our tracks. I don't know how many of them or what proportion of them live across on the opposite side of our tracks.

Q. You know some of them go down these streets and cross these tracks do you not?

A. Probably, the entire lot live on the river side of the shops and down Second Avenue; I suppose some of them live on the south side of the tracks.

Q. What is the radius of your industrial tracks with reference to the business district at Pine Bluff?

A. Our industrial tracks are in the business district.

Q. And the crossings that you pass as shown by the map are in the business district of Pine Bluff?

A. No, not all of them; the residence portion lies east and west of the business district.

516 Q. Well they are in the populated portions of Pine Bluff part of them are they not?

A. Yes.

Q. And part of them in the business district?

A. Yes.

Q. Are there any tracks in Pine Bluff with curves?

A. The only curve in Pine Bluff is at the West end in the vicinity of 5th and 6th Avenue.

Q. A very sharp curve at that point is it not?

A. No sir; it is not obscured; it is open, you can see in all directions.

Q. Have you any idea with reference to car lengths, how many car lengths a man can see another man at that point?

A. Yes, there is no hump; he could see him any distance.

Q. Could he see him 75 car lengths?

A. Yes.

Q. Could he see him one hundred?

A. I think when you go around that curve you can see a man an indefinite distance. There is nothing to obstruct the view there; it is open.

Q. I believe you said there was no more need for a switchman than there is for a fifth wheel to a wagon. Did you ever see a wagon, Mr. Richards, that didn't have a fifth wheel?

A. (No answer made).

517 Redirect examination.

By Mr. Kinsworthy:

Q. I believe the Cotton Belt and the Iron Mountain both run right through the City of Pine Bluff do they not?

A. They are parallel, one on third and one on Fourth.

Q. You said awhile ago they run through the city of Pine Bluff and across all of the crossings mentioned, but you didn't do switching on those crossings?

Mr. Jones: I object. There is no such testimony.

A. No, sir.

Q. Coming from your yards up to the industrial track in Pine Bluff why you would just simply be running over the streets like a train would you not?

A. Yes, until you get to the point where you want to do the switching.

Q. That is what you mean by no switching being done over the crossings?

A. Yes, sir.

Mr. Jones: We object to that.

The Court: Let him state.

Witness excused.

518 *Testimony of William Neff.*

WILLIAM NEFF, of lawful age, being duly sworn and examined as a witness on the part of defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. William Neff.

Q. Where do you live, Mr. Neff?

A. Tyler, Texas.

Q. What is your occupation—what is your official position, and with what road?

A. General Superintendent of the St. Louis Southwestern Railway Company, and First Vice President and General Manager of the St. Louis Southwestern Railway Company of Texas, and I am connected with some other smaller branches of the Cotton Belt.

Q. You have charge of what is known as the Cotton Belt, both in Texas and Arkansas?

A. Yes, sir.

Q. Any other States that you go into?

A. Yes, sir; two other States.

Q. Have you charge of any part of the road in any other State?

A. I have charge of all the States, Missouri, Arkansas, Louisiana and Texas.

Q. Missouri, Arkansas, Louisiana and Texas.

A. Yes, sir.

519 Q. What experience have you had as a railroad man, Mr. Neff?

A. Baggage Master, yard clerk, clerk for the superintendent-

ent, agent, telegraph operator, roadmaster's clerk, division superintendent's clerk, superintendent's chief clerk, chief clerk to the General Superintendent, assistant superintendent,—and as Assistant Superintendent I also filled the place, or that is, the duties of train master—and superintendent and general superintendent, covering a period of twenty-five years.

Q. During this long experience, Mr. Neff, have you had an opportunity to observe and have you observed the manner of doing switching in the various territories you have mentioned?

A. I have, closely. I have personal observation of the switching—I have personally observed switching; that is a part of my duties as an officer in charge.

Q. What towns the size of the cities of the first and second class does your road go into in your jurisdiction in Texas?

A. I don't know what class they are.

Q. Towns, say as large as Jonesboro or El Dorado.

A. Texarkana, Texas; Commerce, Texas, Sherman, Texas, Fort Worth, Texas; Dallas, Texas; Tyler, Texas; Corsicana, Texas; and Waco, Texas.

Q. In comparing the amount of work done by the switch engines, how does the amount done in the Texas towns compare with El Dorado or Jonesboro?

520 The Court: He has not shown any familiarity with the Arkansas towns.

Q. Are you familiar with the towns that your road goes through in Arkansas?

A. I am also familiar with the work done in our yards at Illmo, Missouri; Jonesboro, Arkansas; Pine Bluff, Arkansas; Argenta, Arkansas, and Texarkana, Arkansas, and Shreveport, Louisiana.

Q. Are you familiar with any other towns outside of those mentioned, outside of the State of Arkansas in your territory?

A. Only in a most general way, I might say no.

Q. Now take the various towns in Texas, and take Shreveport, Louisiana and Illmo, Missouri: How would the class of switching compare with that in Arkansas?

A. I think I could best give that by the number of cars handled. The greatest amount of switching done in any of yards is at Illmo, Missouri.

Q. Now take the Arkansas towns first.

A. Taking the Arkansas towns first, Jonesboro would be 9,374 cars per month.

Q. The daily average would be how many?

A. A daily average of 312.

Q. Argenta—the average per day?

A. Argenta is 47.

Q. Pine Bluff?

A. Pine Bluff, 372.

Q. Texarkana, Arkansas?

521 A. Texarkana, Arkansas, 205.

Q. Now outside of the State of Arkansas.

A. Outside the State of Arkansas: Illmo, Missouri, 1,090 cars; Shreveport, Louisiana, 88 cars; Commerce, Texas, 218 cars; Sherman, Texas, 92 cars; Fort Worth, Texas, 76 cars; Tyler, Texas, 223 cars; Corsicana, Texas, 92 cars; Waco, Texas, 167 cars; and Dallas, Texas, 68 cars.

Q. As to the character of the yards, Mr. Neff, how do they compare as to public crossings and grades, the towns mentioned outside of the State and those in the State?

A. As a rule the switching which we do outside of the State of Arkansas is done over more public crossings and over a heavier grade line, and in that respect with more difficulty, if anything, than within the State of Arkansas.

Q. Now are you required in any State, or in any of the towns you have mentioned outside of the State of Arkansas, to use the third helper?

A. No.

Q. Do you use them?

A. At one point.

Q. Where is that?

A. Tyler, Texas.

Q. For what reason do you use them at Tyler, Texas?

A. We have three crews; one day's and one night's and one half and half; and on the two road engines, one day and one
522 night, we employ the third helpers; and the whole force being one engineer, a fireman, foreman and three helpers.

And that is the only point outside the State of Arkansas where we employ the third helper, and the reason that is done—and it has been done for fully two years—was because of the heavy grade line in that yard. The grade approaching the yard from the north is one and five-tenths per cent, and that grade extends clear up into the yard for a third of the distance in the yard, and the grade for the other two-thirds of the yard is seven-tenths of one per cent. There is not a public crossing there in any part of that yard, and the three helpers on these two engines are employed solely for the reason of setting brakes. That is, setting brakes on the cars and protecting the cars against other cars and trains in the north end of the yard, and is made necessary by that heavy grade as there is no crossing in the yard at that point.

Q. Then I understand the third helper is not employed for the purpose of protecting the public at public crossings?

A. Not at all.

Q. In your experience, is there any necessity for the third helper in Arkansas for the purpose of protecting the public at public crossings?

A. In my judgment, or my opinion, there is no necessity whatever for him.

523 Q. Is there any necessity for him besides the work that you have on the grade that you spoke of in your yard at Tyler—is there any necessity for him to do the work required in any other place?

A. No, sir, there is no necessity for him whatever, either at the public crossings or in any other respect.

Q. Mr. Neff, are you acquainted with the manner of railroading in the United States; that is, other States in which your road does not operate?

A. Yes, I've been employed in other States myself.

Q. What other States?

A. Kansas, Minnesota, North Dakota and Montana.

Q. Do you know of any law—do you know of any other law—other than the State of Arkansas—where the railroad is required to have the third helper on the switch engines?

A. No, sir, and in Texas where there is a full-crew bill, the switching of cars is specifically exonerated.

Cross-examination.

By Mr. Jones:

Q. How long has it been since you've done any switching?

A. I've never done any switching.

Q. How long has it been since you've been a yard master?

A. I've never been yard master.

Q. How long has it been since you've been train master?

524 A. I didn't say I was train master; I said I was assistant superintendent and performed the duties of train master that the title of assistant superintendent gave me; that is, I had charge of those duties. And that has been fourteen years ago.

Q. How many switch engines do you employ at Illmo, Missouri?

A. Eight.

Q. I believe you stated you employed three men to work in the yard at Tyler on account of the grade?

A. Yes, sir.

Q. That is on account of the fact of the general condition of the switches and grade?

A. Of the fact of what?

Q. That is on account of the fact that the general condition of the grade required this extra switchman?

A. In that yard it does, for these two engines.

Q. You use the third man for what purpose?

A. To ride the car and set the brakes. You mean in Tyler?

Q. Yes?

A. We use them for that purpose, to see that the brakes are secure so that the cars won't start and go over the derail.

Q. You need the third man in doing the switching, to ride the cars and set the brakes?

A. No, sir.

525 Q. What do you — him for?

A. He works in the field to see that the brakes are set.

Q. He rides the car and sets the brakes, don't he?

A. He may, yes; also his duty is to go up and examine the brakes before coupling.

Q. Is that the only way he handles the brakes? Is that the only way you use him?

A. When the cars are moving he works out there to see that the brakes are secure. We have three engines, and the one that does the work over the public crossings is the one that we have the two helpers on.

Q. But I have reference to the grade and the switching Mr. Neff, switching cars on the grade?

A. We use him to keep the cars from rolling down and to protect the equipment, as I believe I stated before. We use the extra man in that particular yard, for the grade is a most unusual grade there; that track is on a very heavy grade of one and five-tenths per cent, in that yard, and there is no other yard that approaches it on our railroad.

Witness excused.

Thereupon, an adjournment was had until 1:30 p. m.

526

Afternoon Session.

At this time the Court took up the State's motion to exclude the testimony of J. H. Wright; the defendant's attorney stating that Mr. Wright was sick and unable to appear at this time for further cross-examination.

And after considerable argument the court made the following ruling:

The Court: I will sustain the objection of the State as to the testimony of J. H. Wright, and the following testimony will be excluded:

"Q. How long is the Arkansas Central Railroad Company?

A. 46 miles.

Q. From what place to what place does it run?

A. From Fort Smith to Paris in Logan County.

Q. Do you go into Fort Smith?

A. We go in over the Iron Mountain under trackage rights.

Q. You mean by trackage rights, you can have the right to run over the tracks of the Iron Mountain?

A. We lease those tracks and use them in common with the Iron Mountain, having the same rights over them as they do.

Q. Do you do switching in Fort Smith?

A. Yes, sir.

Q. Over what tracks do you switch in Fort Smith?

A. All of the tracks owned by the Iron Mountain.

527 Q. How much of a crew do you use in doing your switching?

A. We have two crews that switch there. One of them consists of an engineer, a fireman, a conductor and two brakemen; another consists of an engineer, a fireman, a conductor and one brakeman.

Q. And you switch over all the tracks that the Iron Mountain switches over?

A. Yes, sir, all of them.

Q. Now you say your switching crew is composed of an engineer, a fireman, a foreman and one helper?

A. They are both train crews, both road crews.

Q. I understand one of the crews is composed of an engineer, a fireman, a conductor and two brakemen?

A. Yes, sir.

Q. And the other is composed of an engineer, a fireman, a conductor and one brakeman.

A. Yes, sir, that is correct.

Q. Now all of these crews that do your switching there, do you have any trouble as to the safety of the public?

A. No, sir, we have never had an accident in the Fort Smith yards.

Q. Do you have any trouble as to the safety of your employees?

A. No, sir, none whatever.

Q. Are they sufficient to do your work?

A. They do it easily.

528 Cross-examination.

By Mr. Witt:

Q. Where you use five men, is that on passenger or freight trains?

A. That is the local freight train.

Q. The four men was used on what?

A. A passenger train. They become a switching crew as soon as they tie up as a passenger train?

Q. I don't understand?

A. I say they become a switching crew as soon as they tie up as a passenger train.

Q. Can you explain why it is necessary to have one more man on the freight train than on the passenger?

A. Yes, the reason we have one more man on the freight is because we unload the local freight along the road and necessity requires more than one man to do that work."

Mr. Kinsworthy: I desire to save my exceptions to the court's ruling, and to the action of the court in excluding the testimony of J. H. Wright.

The Court: All right.

529

Testimony of B. A. Porter.

B. A. PORTER, of lawful age, being duly sworn and examined as a witness on the part of defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. B. A. Porter.

Q. Where do you live, Mr. Porter?

A. Memphis, Tennessee.

Q. Have you any connection with the Louisiana, New Orleans and Texas Railway?

Mr. Jones: We object to any testimony going into this record about the Louisiana, New Orleans & Texas Railway. That has been sustained by the court two or three different times.

The Court: They haven't got far enough with that yet.

By Mr. Kinsworthy:

Q. Have you any connection with that road?

A. Yes, sir.

Q. What is it?

A. I am Superintendent of it.

Q. Where is the road located?

A. Helena, Arkansas.

Q. How long is it?

A. All told, it is less than five miles.

Q. Whereabouts does it run and where from, what points?

A. Just our yards there in Helena.

Q. In other words it is a terminal road?

530 A. Yes, sir.

Q. Does that road do switching for any other road?

A. For the Missouri & North Arkansas.

Mr. Jones: I object to that.

The Court: The objection will be sustained, but I will let you get what you want to prove into the record. But what is your objections, Mr. Jones?

Mr. Jones: I object to it on the ground, Your Honor, in the first place it is testimony in regard to a railroad less than four miles in length; it is under the length affected by the statute; and regardless of whether it does switching for any other road or not, it wouldn't affect the constitutionality of the act. And I object to it because it is altogether irrelevant testimony.

The Court: The objection is sustained.

Mr. Kinsworthy: We save our exceptions.

Defendant offers to prove by this witness that the Louisiana, New Orleans & Texas Railway Company is less than five miles in length; that it is a terminal railway located at Helena, Arkansas; that this railroad does all the switching for the Missouri & North Arkansas Railroad at Helena, Arkansas; and that the Missouri & North Arkansas Railway is something over three hundred miles long; that it also does the switching of all the cars for the Yazoo & Mississippi Valley Railroad, coming into Helena; that the Yazoo & Mississippi Valley Railway is 1400 miles long; that they have two switch

531 engines in the city of Helena; that these engines switch and push cars over the various crossings in the city of Helena for the Yazoo & Mississippi Valley Railway and the Missouri & North Arkansas Railway; and this road does not comply with the act because it is less than 100 miles in length, and in its switching crew they use an engineer, fireman, foreman and two helpers.

The court refused to permit the defendant to make the above proof; to which ruling of the court the defendant saved its exceptions.

Witness excused.

532

Testimony of W. S. Cochran.

W. S. COCHRAN, of lawful age, being duly sworn and examined as a witness on the part of defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. What is your name?

A. W. S. Cochran.

Q. Where do you live, Mr. Cochran?

A. Fort Smith.

Q. What is your business?

A. Conductor and Train Master for the Arkansas Central Railway Company.

Q. For the Arkansas Central Railway Company?

A. Yes, sir.

Mr. Kinsworthy: Now, Your Honor, I wish to prove by this witness that the Arkansas Central Railway Company is 46 miles in length; that it runs from Paris, Arkansas, to Fort Smith, Arkansas; that it has no yards or terminals within the city of Fort Smith; but that it has a contract with the St. Louis, Iron Mountain & Southern Railway Company by which it uses all of the tracks and yards of said company in Fort Smith, for the purpose of switching its cars over said tracks; and it does switch and push its cars over all the tracks belonging to the St. Louis, Iron Mountain & Southern Railway Company in the city of Fort Smith, and that in doing so it uses two engines; one of the engines has a crew of an engineer, a fireman, a foreman and one helper; the other has an en-

533 gineer, a fireman, a foreman and two helpers.

Mr. Jones: The State objects to the introduction of that testimony on the ground that the Arkansas Central Railway Company is a road less than one hundred miles in length and that this testimony cannot affect the constitutionality of the Statute because they do the switching with only two helpers, and it has no application in the act to railroads less than one hundred miles in length.

The Court: Let the objection be sustained.

Mr. Kinsworthy: We save our exceptions.

Witness excused.

534

Testimony of J. W. Dean, Recalled.

J. W. DEAN, being recalled by defendant, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Mr. Kinsworthy: I want the record to show that the defendant offered to prove by Mr. Dean that he was familiar with the class of switching done in all the yards in Arkansas, and that all switch

engines engaged in switching cars would be engaged in interstate commerce business.

Mr. Jones: We object to that.

The Court: The objection is sustained.

Mr. Kinsworthy: We save our exceptions to the ruling of the Court.

The Court: All right.

535

Testimony of G. H. Schweer, Recalled.

G. H. SCHWEER, being recalled for further examination, testified as follows:

By Mr. Kinsworthy: I have recalled Mr. Schweer in order that the State may further cross-examine him if they wish to.

Mr. Jones: I would like to have the court rule on my motion as to Mr. Schweer's testimony, first.

The Court: Let the record show that the motion of the State to strike out such parts of the testimony of witness G. H. Schweer, as to the trains operated in the yards in the city of Hot Springs on the 17th of June, 1913, being engaged in interstate commerce, is by the court sustained, said testimony being as follows:

"Q. Take the data you have, June 17, 1913,—I want to know whether the cars or trains that were switched here were engaged in interstate business or not.

A. Yes, sir, I have a list here of the trains that came in here and freight trains. My first car here is merchandise, a car loaded in Little Rock containing freight from various points, Chicago, St. Louis, Little Rock, Kansas City, etc. Now the next car here is a car of hay from Wagoner, Oklahoma. Two cars of coal from Illinois; a car of produce from Little Rock. That was the train that came in that morning.

Q. Just have one freight train that day?

536

A. Yes, sir, and have one out.

Q. How many cars did you have in that freight train?

A. We had five cars.

Q. How many of them had interstate shipments in them?

A. Four I think.

Q. You had one freight train out only that day?

A. Yes, sir.

Q. How many cars in it?

A. Four cars.

Q. How many of these cars contained interstate shipments?

A. Two I think, probably three. Here is one with merchandise to Little Rock; that probably had merchandise beyond. We usually load all merchandise in Little Rock cars.

Q. Then both the freight trains, one in and one out, were engaged in interstate commerce?

A. Yes.

Q. Take the passenger—you have how many passenger trains in?

281

A. Three in and three out.

Q. Were they all engaged in interstate commerce?

A. Yes, sir.

The Court: You don't have anything to do with passenger trains do you?

A. Not particular.

By Mr. Kinsworthy:

Q. How the two of those in, was one what was called the Hot Springs Special from St. Louis?

A. Yes, sir, number 17.

537 Q. That comes from St. Louis here?

A. Yes, sir.

Q. Take the next number?

A. Number 18 going out.

Q. That goes from Hot Springs to St. Louis?

A. Yes, sir.

Q. Take the next one?

A. The next one is number 19.

Q. Where does that come from?

A. That came from Kansas City.

Q. To Hot Springs?

A. Yes, sir.

Q. Now what was that train going out?

A. Number 20.

Q. It goes back from Hot Springs to what point?

A. To Kansas City.

Q. Now the other trains?

A. They are Pine Bluff trains; one comes from Pine Bluff and the other goes out to Pine Bluff.

Q. What is the number?

A. 844 and 843.

Q. Do they make any connection with main line passenger trains at Benton?

A. Yes, sir.

Q. What connection do they make, if you know?

A. Well, I don't know what train they connect with, I think number 4,—I am not certain about what trains, about what the number- of the trains are.

538 Q. I understand they make connection at Benton with trains going to Texas and also to St. Louis?

A. Yes, sir.

Q. Do passengers travel on that train through Benton and make connection with these through trains?

A. Oh, yes, sir.

Q. Did the switching crew handle the freight trains, the cars you spoke of, on that day?

A. Yes, sir.

Q. What was the total number of cars, including the passenger coaches switched in Hot Springs that day?

A. June 17th, fifty cars handled in and out.

Q. How many of these were passengers, I mean passenger trains?

A. Thirty-three.

Q. In other words on that date, the six passenger trains you speak of, or rather the three—there were thirty-three coaches in the passenger trains?

A. Yes, sir, in and out.

Q. And seventeen freight trains?

A. Seventeen cars?

Q. I mean freight cars?

A. Yes, sir."

Mr. Kinsworthy: The defendant objected to the ruling of the court and the court's action in excluding the above testimony, and asked that its exceptions be noted of record.

539 That is as far as I would want to go on this testimony of this witness.

Mr. Jones: Let me see if I want to cross examine the witness any further. (Referring to witness's testimony.) We do not care to cross-examine Mr. Schweer any further.

Witness excused.

Thereupon, the defendant rested its case.

540

Testimony of C. J. McKay.

C. J. McKAY, of lawful age, being duly sworn and examined as a witness on the part of the State, testified as follows:

Direct examination.

By Mr. Jones:

Q. State your name?

A. C. J. McKay.

Q. Where do you live, Mr. McKay?

A. Little Rock.

Q. What is your business?

A. Switchman.

The Court: Switchman?

A. Yes, sir.

By Mr. Jones:

Q. What length of time have you been a switchman?

A. Seven years and seven months.

Q. In whose employ are you now?

A. Iron Mountain Railroad.

Q. At what point?

A. Little Rock and Argenta terminal.

Q. Were you a switchman for the Iron Mountain at Little Rock before the foreman and three helpers was put on?

A. I was.

Q. Did you have a regular job with the Iron Mountain before the three men were put on?

A. Yes, sir, I did.

541 Q. The fact of this law going into effect requiring a foreman and three helpers didn't give you a job, did it Mr. McKay?

A. It did not.

Mr. Kinsworthy: I object to that, that is, on direct examination. The Court: I don't think that is testimony.

Mr. Kinsworthy: It gave other people a job, didn't it?

A. Yes, but I had a job.

Mr. Jackson: I object to that.

The Court: I don't think that is material one way or the other.

By Mr. Jones:

Q. They have switch engines working in the yards?

A. Yes, sir.

Q. They work day and night, both?

A. Yes, sir.

Q. How many switch engines operate in Argenta yards?

A. At present six night and eleven day.

By the Court:

Q. Eleven engines in the daytime you mean?

A. Yes, sir.

Q. Does that include the engines working at Little Rock?

A. For the Iron Mountain, yes, sir.

Q. Now the engines in the employ of the Iron Mountain at Little Rock and Argenta, is there any certain designated portion of the yards for each engine to work in?

A. Well, no; they work all over all terminals.

542 Q. In your opinion as an expert switchman is it necessary for the public at the crossings to have a foreman and three helpers with each switching crew?

A. Yes, sir.

Q. Are you familiar with the conditions in the yards at Argenta and Little Rock, with reference to curves, grades and blind crossings?

A. I am.

Q. Do these conditions tend to make it any more dangerous in switching?

A. It does.

Q. Do you ever do such a thing as to drop a car?

A. Yes, sir.

Q. Just explain to the court what you mean by "dropping a car."

Q. Well, we'll say an engine is coming down here at this switch (indicating); you've got to get up high enough speed to jerk the car in; then you've got to get a slack, that is, reverse the engine, shut it off enough to cut the car off; run the engine in her- (indicating) in one track there; throw the switch, and the car will go in another track.

Q. As I understand it Mr. McKay, by dropping a car you mean that the engine will be going down the track with a car behind it

and you will get up speed, running at a fair rate of speed—at a rate of speed that it requires you to run to have to jerk that car in the clear, and the engine will pass over the switch, and the engine will be shut off and the car will be cut off the engine, and the engine will go down one track and the car will go down another track by the engine?—or the next track parallel to it?

A. Yes, or some other track, other than where the engine goes.

The Court: It is not necessary to parallel the engine?

A. No, it might go around the curve, the engine might go around the curve and the car might go around the curve too.

By Mr. Jones:

Q. The car goes in the same direction as the engine goes, when the car is cut off?

A. That depends on which way the track goes that the car will be on, when they cut the car off.

Q. Did you ever drop these cars over public crossings?

A. I've done it a lots of times.

Q. Now Mr. McKay just explain to the court about that: how a car is dropped over a public crossing, now when you have three helpers and a foreman.

A. Well, the foreman will go to the switch: the man following the engine will stay on the foot board; the short field man goes on top of the car; the long field man goes to the crossing.

Q. It takes four men, in your opinion, to perform this operation?—to have a man to guard the crossing?

A. It does.

544 Q. Now, did you do this when you had a foreman and two helpers?

A. We could not.

Q. Did you drop cars in the yards when you had a foreman and two helpers?

A. Yes, sir.

Q. Did you drop cars across public crossings when you had a foreman and two helpers?

A. Yes, sir.

Q. What was the result on the crossing when you only had a foreman and two helpers?

A. We'd go on like the crossing wasn't there.

Q. You mean by that that the crossing wasn't guarded by a switchman?

A. Nobody there at that crossing, no switchman there.

Q. I'll ask you Mr. McKay if dropping a car is a necessary proceeding and a practical proceeding in some of the yards, or in the various yards of Little Rock and Argenta?

A. It is in all of them.

Q. There has been something said about the man that cuts off the car riding the car; what would you as a switchman think about that proceeding?

A. Well, you have to have a man on the car when you want to drop it and he is supposed to ride that.

Q. Well, could the same man that pulls the pin and cuts the car loose, could he ride the car that is dropped across a crossing?

545 A. I never could.

Q. Is that a dangerous operation?

A. Yes, sir.

Q. That car is moved at a pretty high rate of speed, is it not?

A. Yes, sir.

The Court: Don't lead him, Mr. Jones.

Q. Now did you ever do such a thing as to kick a car—as to kick a car across a public crossing?

A. Yes, sir.

Q. Now before you had a foreman and three helpers with your crew, did you guard the crossings with a foreman and two helpers when you kicked a car?

A. We could not.

Q. Do you when you have a foreman and three helpers?

A. Yes, sir.

Q. Is it necessary to have that many men in order to guard that crossing when a car is kicked over it?

A. It certainly is.

Q. Did you ever shove cars or push cars over a crossing—public crossing?

A. We do.

Q. Mr. McKay, in switching cars in Argenta and Little Rock, could the work be done that is assigned to you to be done without working fast? That is, does it require you to work pretty fast?

546 Mr. Kinsworthy: I object to that as leading, and I ask that that be stricken out.

The Court: I think the objection is well taken, and I will sustain it.

The Court: Be careful about your questions Mr. Jones.

By Mr. Jones:

Q. What portion of the day are you busy in order to get your switching done that is assigned you to do?

A. All day, if we are working days, and all night if we are working nights, except what time we are off to eat.

Q. Do you think it necessary in the general switching operations to have these three men, that is, a foreman and three helpers, when you are doing switching over public crossings?

A. I do.

Q. Now this performance of dropping cars and kicking cars and shoving cars, is that an operation that is seldom performed.

A. No, that is done every day and every night.

Cross-examination.

By Mr. Kinsworthy:

Q. Now Mr. McKay you say you have been with the Iron Mountain how long?

A. Seven years and seven months.

Q. At Argenta?

A. Yes, sir.

547 Q. Did you ever work at any other place as switchman?

A. No, sir.

Q. Then your entire service as a railroad man has been with the Iron Mountain?

A. Yes, sir.

Q. Now about kicking or dropping cars across a crossing; you stated that when dropping a car across the crossing one helper would be on the foot board of the engine?

A. Yes, sir.

Q. That the foreman would turn the switch?

A. Yes, sir.

Q. That another helper would be on the car, would he?

A. Yes, sir.

Q. And that the other man would be at the crossing.

A. Yes, sir.

Q. Who's going to cut the car loose?

A. The man on the footboard.

Q. The man on the footboard of the engine?

A. Yes, sir.

Q. Then you wouldn't have but one car on the engine?

A. We might have a dozen.

Q. How could you stand on the engine and cut it off then, if you had that many?

A. We have levers there for that purpose.

Q. The car would have to be hitched to the engine if you cut it off, wouldn't it?

548 A. Yes, sir.

Q. Then if you are going to kick a car across the street the switch would have to be pretty close to the street?

A. Not necessarily.

Q. Why?

A. It might be back four or five car lengths from the street.

Q. Would you kick it that length?

A. Yes, sir.

Q. What is the reason the foreman couldn't turn that switch?

A. The foreman is going to throw the switch.

Q. If you have two helpers what is the reason one couldn't be at the crossing?

A. Somebody's got to ride the cars when they are dropped.

Q. The man who rides the cars, couldn't he cut them off?

A. No, sir.

Q. Why?

A. They generally have to go in between the cars to get them in lots of cases.

Q. Why couldn't he?

A. He couldn't ride on the side of the car down over the track.

Q. Isn't there a ladder on the side where the coupling is?

A. Yes, sir.

Q. Isn't there a coupling on each side?

A. Supposed to be.

549 Q. What's the reason he couldn't pull the lever and ride the car?

A. He'd get knocked off.

Q. It will always clear a man on the side, won't it?

A. Not always.

Q. The tracks are built to clear a man from the buildings, are they not?

A. Not on all streets.

Q. When you drop cars, doesn't the engine go in front of the car?

A. Well, the engine might be backing up with a car, and you'd have the engine in the opposite direction from the way you were going.

Q. When you drop a car you are pulling it, aren't you?

A. Yes, sir, you are pulling it over the way the engine is headed.

Q. Then when you drop a car the engine is in front of the car, going in the direction it is going?

A. The car is going in the direction the engine goes.

Q. In dropping a car across a crossing the engine goes first?

A. Yes, sir.

Q. And the car simply follows over the crossing behind the engine?

A. Not on the same track every time.

Q. If it goes across a crossing it is bound to be pretty close to it?

A. Yes, sir.

550 Q. Then if any body was going across the crossing the engine would be the first to follow ahead?

A. Not in every case; the engine might not get there. Sometimes they don't get over the crossing.

Q. They stop before they get to the crossing?

A. The engine could; it does in some cases, some few.

Q. In that case you'd be dropping that car a long ways?

A. Not necessarily. You drop them in some places ten car length-, and some three.

Q. In dropping a car ten car lengths, wouldn't the engine run that far beyond the switch?

A. Not in every case, no, sir.

Q. Anybody coming across that crossing could see the engine coming, couldn't he?

A. Not every time, there might be something in the way, some building to stop it—to shut off his view on the track the way the car was coming.

Q. Well, where these conditions are at the crossings in Little Rock, these crossings are guarded by a flagman, aren't they?

A. Some few.

Q. Haven't you seen one man drop a car?

A. Not drop it; I never done that in my life.

Q. How did you ever see them when they had two men drop one?

A. Not that I know of; I've worked on the engine with two men but we never dropped cars.

551 Q. Couldn't you drop cars with two men?

A. Not safely.

Q. Now you say they couldn't drop a car with less than three men?

A. No, sir.

Q. And a foreman; it would take four men to drop a car?

A. Properly.

Q. Just tell me where this man would be?

A. Well, sir, the four men, you'd have one at the switch, then that might be the foreman or another man, and you'd have one at the crossing, and then the man following the engine he would be on the footboard—

Q. Suppose there wasn't any crossing there?

A. Maybe they'd get the other man at the switch, and then if there's a crossing there the long field man would be at the crossing?

Q. Is that all.

A. Yes.

Q. That is just the two men and a foreman, and you have another field man.

A. Well, the man that rides the car.

Q. Does that one that rides the side of the car, does he cut it off?

A. No, sir, he don't.

Q. Who cuts them off?

A. The man following the engine, he cuts them off; the short field man rides; the foreman throws the switch, and the long field man watches the crossing.

552 Q. Can't the man standing on the footboard of the engine, can't he step on the car and cut it off too; that is, can't he cut it off and ride the car too?

A. No, sir.

Q. He can't do that?

A. No, sir.

Q. Isn't there a lever that comes out to the side of the car and also on the engine where they cut them off?

A. It is something like four and a half feet from the engine.

Q. Can't you stand in the stirrup on the car and cut them off, and haven't you done that a many a time?

A. I don't recollect any time that I ever did.

Q. Suppose there wasn't any crossing now and you were dropping a car; you wouldn't need this extra man?

A. Yes, we could use him.

Q. You said you could use him by standing on the crossing—have him stand at the crossing?

A. If there was a crossing there, there's where he would go.

Q. Well, if there isn't any crossing, now, you don't need the third man in dropping a car?

A. Yes, we could use him. There are lots and lots of time—when we drop over the crossing.

Q. But there's no crossing there, say.

A. I was just a-going to explain: This extra man might help ride—he might ride—he might get on the car.

553 Q. Then you'd have two to ride?

A. Not in every case, not every time; but he might get on.

Q. If you are going across a crossing, you would only need one man; and if you didn't go across the crossing you would need two men to ride it?

A. The man at the crossing may catch on that cut as it goes across.

Q. The man following the engine, where is he?

A. He is on the foot board.

Q. You've only got one cut?

A. Only got one cut.

Q. You let all that go into this pocket, that is, switch?

A. Yes, sir.

Q. Suppose you had ten cars and were dropping them in a side track that would hold only three or four?

A. We wouldn't drop them.

Q. Where would you drop them?

A. We'd have to take them somewhere else, cut them up.

Q. Don't you drop cars into these short industry tracks?

A. Yes, we drop cars into the industry tracks.

Q. How long would a string of cars be before you would drop the cars?

A. You leave it to the men's judgment, and they will drop about two car lengths.

Q. Suppose you have four cars; and have two standing out here and had a hold of two?

A. Yes, sir. But you couldn't get back with the engine then.

554 Q. You couldn't get back?

A. No.

Q. Then you wouldn't have any more cars attached to the engine than you wanted to drop?

A. You'd get what cars you wanted lined up before you'd cut and drop them.

Q. Suppose you wanted to drop some cars into an industry track, say, Penzel Grocery Company; how many would you put in there?

A. To the best of my knowledge that track holds nine cars, to clear that house lead.

Q. Then you couldn't drop any more than nine cars in there?

A. You could drop forty in that direction.

Q. Then you couldn't drop any more than nine cars if that track only holds nine cars?

A. To the best of my judgment it holds nine cars.

Q. Don't you know that space in there is only for three cars?

A. I'm talking about what the track will hold; I'm not talking about that man's space.

Q. Don't you know he's only got a space in there for three cars?

A. I don't know.

Q. How much space have you got for Plunkett-Jarrell Grocer Company?

A. I don't know.

555 Q. When you drop those cars in there you wouldn't have a longer string of cars than you could drop in that track?

A. Than the track would hold.

Q. Yes.

A. No, sir.

Q. You wouldn't attempt to drop a string longer than the track would hold?

A. We never have.

Q. The reason you wouldn't would be that the cars you were going to drop would always be in the string, just the ones that you were going to drop?

A. Might drop them in there and then pick them up and place them.

Q. If you had six cars and wanted to drop one, would you drop the whole string in and take and pull the rest of them out?

A. We might not drop the whole string in; it depends on the conditions—that is, the position of the cars and where we wanted them spotted.

Q. Is there any danger in dropping cars in there?

A. Not if it is properly done.

Q. There is no rule of the company to drop cars?

A. Only when it is necessary.

Q. Isn't it against the rule to drop cars?

A. They claim so only when it is necessary.

556 Q. Isn't the rule of the company to always take the safest course—take the course that will always be safe?

A. No, sir.

Q. Read Rule 106. (Handing witness rule book)

A. This is a rule set up by the railroad to work by, but we don't work by it. (Reading the rule as follows) "Rule 106. In all cases of doubt or uncertainty the safe course must be taken and no risks run."

Q. So as a rule you don't drop cars?

A. Only when it is necessary.

Q. And when it is necessary you must take the safe way to do it?

A. Yes, sir.

Q. That is the rule?

A. Yes, sir.

Q. If it is safe to drop a car you drop it?

A. There isn't any of it safe; you might get killed or hurt any time.

Q. You might get killed or hurt, you say, any time?

A. You bet.

Q. There isn't anything safe about a railroad, is there?

A. Well, it ain't like sitting up in the house at home, no, sir.

Q. I understand it is more or less dangerous to handle cars?

A. Yes, sir.

Q. There's no danger in dropping these cars, but it's just best not to do it?

557 A. There's nothing to make it dangerous there in every case.

Q. In every case there's nothing to make it dangerous?

A. No, sir.

Q. In other words, in most cases where you drop cars you drop them without any danger to anybody?

A. No, sir.

Q. Why?

A. For the simple reason they're upon a crossing.

Q. Suppose you had no crossing?

A. You'd use your own judgment and take your own risks about that.

Q. There are not many crossings where you drop cars across, are there?

A. Several of them.

Q. What are they?

A. There is Main Street, in Argenta, and Ninth Street in Argenta, in the Fort Smith yards, and over Rock Street, and I've forgot the street, I think it's Commerce, just right between Rock and the Valley depot.

Q. I understand you have four places that you drop cars over crossings; that is, Main Street in Argenta——

A. And Ninth Street in Argenta, and Rock Street, and Commerce; we drop cars over there very often.

Q. I understand these are the only places that you drop cars across crossings?

558 A. No, they're not the only places.

Q. What are the other places?

A. We might go up to the south end in the Fort Smith yards and across Fourth Street.

Q. That is between the bridge, isn't it?

A. No, the bridge starts in at Washington Avenue.

Q. Is Fourth Street open on the Valley road?

A. No, sir, the Fort Smith yards.

Q. Now we will take Main Street. You say you drop cars there once in a while; don't you have a watchman there?

A. Part of the time.

Q. You have one there all day, don't you?

A. He is supposed to be there from seven in the morning to six in the evening, I think.

Q. Well, he's generally there?

A. I've seen him around Main Street six or seven blocks away.

Q. He is supposed to be there?

A. Yes, sir.

Q. Ninth Street; isn't that the viaduct in Argenta?

A. No, sir, not in Argenta.

Q. You've got a watchman there?

A. Part of the time.

Q. All day?

A. From seven in the morning until six in the evening, so I understand.

559 Q. The testimony shows that he is there. Now we will take Rock Street; isn't there a watchman there?

A. Yes, sir.

Q. Take Commerce Street; isn't there a watchman there?

A. In the day time.

Q. Now take Fourth Street in Argenta; isn't there an underground crossing there?

A. No.

Q. Isn't there where the underground crossing is?

A. No, sir, it's not. It is between Second and Third Streets on Washington Avenue.

Q. Is there any switch where you drop the cars there?

A. Well there is, but that is not where we drop the cars.

Q. You don't drop the cars over that crossing?

A. We drop it above and it crosses over the crossing.

Q. Of Fourth Street?

A. Yes.

Q. How far?

A. Between Third Street and Fourth Street; the switch is between Third Street and Fourth Street.

Q. And in dropping the cars your engine would go over the Third Street towards Fourth Street, wouldn't it?

A. Yes, sir.

Q. And the underground crossing, is it at Third Street?

A. Yes, sir.

Q. Then you drop a car before you would get to Fourth Street?

A. We'd cut it off before we'd get to Fourth Street.

560 Q. Isn't there a watchman at Fourth Street?

A. There is in the day time.

Q. At the other crossings where you stated you drop cars, there's a watchman all day, isn't there?

A. No, we drop cars at other places too.

Q. But you have named all of them?

A. We drop cars at East Little Rock yards.

Q. Well, Rock Street and Commerce; you've named that.

A. We drop cars at Sixth Street.

Q. Where is that?

A. On the Valley Division.

Q. Is there a watchman there?

A. Yes, sir.

Q. There is a gate and a watchman too, isn't there?

A. Yes, sir.

Q. Whereabouts is the next place?

A. At the foot of Ninth Street.

Q. Is there a watchman there?

A. There is not.

Q. How many cars do you drop there?

A. We might drop one and we might drop a half a dozen; I don't know.

Q. When did you ever drop a car there?

A. I couldn't say just now.

Q. When? Name one time?

A. I couldn't say.

Q. How many times have you worked over there?

A. I've worked over there quite a bit.

561 Q. How many days?

A. I couldn't recollect, maybe a dozen times.

Q. Who did you drop cars for?

A. We had a car for the Waters-Pierce Oil Company and a car for Cherry Walker.

Q. Did you ever drop a car yourself there?

A. I've helped to do it, but I can't name the day now.

Q. You can't name the day?

A. No, sir.

Q. How many times?

A. I won't say.

Q. Can you remember any time definitely when you ever dropped a car there?

A. No—I do know of one man's place of business, where the majority of his stuff was dropped and shoved into his place. I don't know how many times the other engines took stuff there.

Q. You dropped a car there and pushed it in?

A. Yes, sir.

Q. What is the reason you didn't push it in in the beginning?

A. Didn't have it on the right end.

Q. You have a run-around track there?

A. Yes, sir.

Q. What is the reason you didn't go around the run-around track and push it in?

A. To run around there would take four or five minutes.

Q. Didn't you do that because it was a little more convenient?

562 A. I don't know we ever done it at this place, because I think they allowed another man his time for doing that, running around that way.

Q. Didn't you do it because it is a little more convenient?

A. We are limited for time and we've got so much to do and we've got to get through.

Q. In these yards there are run-around tracks, aren't they?

A. In some cases.

Q. Isn't there a run-around track on the main yards?

A. Yes, sir, you can run around them.

Q. Isn't there run-around tracks in East Little Rock yards?

A. Yes, sir, some run-arounds in the East Little Rock yards, yes, sir.

Q. Now when you have got a string of cars and want to set them in at the industry tracks, what is the reason you can't go around the run-around and push them in without dropping them in?

A. You've got to take the cars too far and work to get around them and bring them back.

Q. You've got them right in the yards?

A. You've got them right in the yards but you've got them on the wrong end, haven't you?

Q. What do you mean by the wrong end?

A. The opposite end from the end you are going to spot them, or going into these industries.

Q. If you are going to drop a car you drop the car next to the engine?

563 A. You ain't got a hold of but one cut.

Q. I understand you haven't got a hold of but one cut, but if you are going to drop cars you will drop the car next to the engine?

A. You stand on the footboard and cut them, is what we call it, cut them all off.

Q. Suppose the engine is on the other end; couldn't you push them in just like you were going to drop them in?

A. I don't quite understand you?

Q. Suppose you had a string of cars—five cars—behind your engine, and you were going to drop in the Plunkett Jarrell track. Now would you drop the whole train, or whole cut; you cut them off the engine and run the engine east of the track and turn the switch and let them run into the track?

A. That is the way we drop them, as I understand.

Q. Now suppose there are cars behind, and suppose you are going east; couldn't you just push them in east?

A. If we got the cars behind we might kick them in.

Q. You would kick them and not shove them?

A. If you had the cars lined up.

Q. If you had the cars ready to spot and on the end; you wouldn't kick them, you'd just shove them, wouldn't you?

(No answer.)

Q. If you were going to drop them in there, couldn't you push them in if the engine was at the other end of the string, couldn't you?

A. I don't understand what you mean.

564 Q. Suppose you had five cars to your engine and you wanted to drop two the farthest away from your engine; how would you do that?

A. We don't do that.

Q. You never drop the farthest one? You always drop the one next to the engine?

A. I don't recollect a time.

Q. Then the only cars you would drop would be next to your engine?

A. No, we drop all of them out of the way, whether it was one or a dozen.

Q. Suppose the farthest car you wanted to set in on track; say you had one back at the farthest end from the engine; now would you drop the whole string in that track and then have to pull these others out to get that in?

A. Well, we might have to switch the car out and line it up in there, like they are spotted, if that is what you mean.

Q. But you wouldn't drop a car unless the car was next to the engine?—that you were going to leave in the track?

A. I don't know how you mean.

Q. Suppose you had five cars hitched to your engine, Mr. McKay, and the car you wanted to put in the track was the last car from the engine, back of the engine; the other four cars next to the engine you wanted to take somewhere else?

565 A. You drop them until you get away with the others and get it alone, and then shove it in.

Q. You are going to drop it in?

A. You are going to drop these and shove this in there and set it in there so you could do that.

Q. I want to know how you are going to shove it in there: Suppose the engine was going forward and you had a hold of one, two, three, four, five cars; the engine was going in front of these. Now here was the track (indicating) and you wanted to drop the cars in here—you wanted to drop No. 5.

A. Is this the track here (Indicating)?

Q. Yes. (Continuation of above question.) How would you get No. 5 cut off her and dropped in here?

A. You'd get all these cars together and pick these cars up—

Q. How would you pick them up?

A. You are going to let the engine down here (Indicating).

Q. I don't know what you've got down there,—

A. (Continuing:) This is the only car you're going to drop, this is the fifth car from the engine this way—the farthest one that way there, and you'd cut them off from the engine and come around here, let these cars stay here and come in there and set them all out except the one next to the engine, or you would leave that in there, whichever way was proper. (Indicating on paper.)

Q. Is that your practice?

566 A. Yes, sir, we do it right along.

Q. Then you've got to make two moves in the place of one?

A. No, sir, not when we go east here. We generally line up what cars we want to drop. If we've got a piece of work we'll get them altogether and drop them all at once. At present there is only about two hours' work in that.

Q. I know; if you don't drop one car you leave them until you get them altogether?

A. We leave them until we get them all together and make one movement.

Q. If you're going to drop more than one you would make more than one movement?

A. You just get a hold of them here and throw these out that you don't want in there, and then make one drop.

Q. Suppose you had one, two, three, four, five, like this (Indicating) and you didn't want these in here (Indicating), you would cut off No. 1 and that would go in this track here, this first track, and the three and four and five in here, and five would be the last car sticking out here (Indicating), wouldn't it?

A. Yes, sir.

Q. That is a spur track?

A. Yes, sir.

Q. Now how are you going to get one, two, three and four, and leave five out of this track here?

A. You mean to drop it?

Q. Yes.

567 A. You'd go in and get that with the engine.

Q. You wouldn't have to go in if you'd push it in that way?

A. Yes, or leave it for the night switchman to make.

Q. Now if you had a certain amount of cars to drop in that way, you'd have to get a hold of a string of cars to pull them out; then cut off this one,—cut five off—and go and push that in?

A. We don't generally do that; we generally line them up in what is called station order and drop them into the industry tracks—drop a car in there and leave it in there and it will be right in place,—

Q. Then if you had an engine at the other end you could push that in and wouldn't have to drop it?

A. If we had it in proper place we could shove it in, yes.

Q. You could shove it in the proper place just as easy as you could drop it in?

A. But you had your engine on the wrong end.

Q. Suppose you had your engine on the other end?

A. You could shove it in there.

Q. Then it would be a safe way?

A. The way we do it, this wouldn't be any safer.

Q. As a general rule you do it this way?

A. On some occasions.

Q. You just drop them on occasions?

A. No, sir.

Q. You say it is against the rule to drop cars in across crossings?

A. Only when it is necessary.

568 Q. Is it necessary to drop cars across crossings when you can push them across?

A. Yes, sir.

Q. Is it necessary to drop a car when you can push it across a crossing?

A. If we've got it on the wrong end.

Q. Can't you get it on the right end?

A. Lots of times we can't.

Q. Why?

A. Lots of places you can't run around.

Q. You told me there was a run-around here.

A. Not in all cases.

Q. Couldn't you run around here (Indicating)?

A. Yes, if you had time; you'd have to take the cut of cars here and go down—cut them off and go down the river front and cross Baring Cross, and across the bridges and around there, around the whole yards, and get in behind here, and it would take two hours and thirty-five minutes, or two hours.

Q. You wouldn't be dropping cars when you were doing that?

A. We would be pushing cars over the yards; that is what I say, that is the only way we could get around on that run-around.

Q. You would be simply lining up the cars and that would be done up in the yards?

A. How would you line them up?

Q. As you stated, if you wanted to put so many cars into Penzel Grocer Company down here in the Little Rock yard; you'd line them up in the yard?

569 A. If we were going into the Penzel track we would line them up on the river front, that is the main line.

Q. The river front?

A. Yes, sir.

Q. What is the reason you couldn't get ahold of them on the other end and push them in?

A. Because if we lined the cars up on the river front we would have to cross the Valley bridge and go over in the Mountain yards down the main line which is in the Mountain yards; then out in the Mountain yards and across the Mountain bridge and up the river front again.

Q. That is when you are pulling the cars over there?

A. No, not when we are pulling the cars across.

Q. Well suppose here is the East Little Rock yards (indicating) and you had a string of cars you wanted to put in the industries, in the yards here where there isn't any crossing, and these cars are at the wrong end of the engine; what is the reason you couldn't drop them in the side track, let the engine go down the main track and take the engine and go down here and push them in place, instead of dropping the cars in there?

A. You would have to shove over what is known as Rock Street, and you'd have some cars ahead here and some behind here (indicating).

Q. Can't you drop them in on a track here and shove them
570 here (indicating)?

A. No, sir, not without dropping them over the highway crossing.

Q. You can't?

A. You'd have to drop them over second street.

Q. Second Street is where?

A. Just below the Rock Island Depot, right by Martin Street.

Q. That is protected by a watchman?

A. They've got a watchman there.

Q. There is a watchman there all the time?

A. Probably so.

Q. What is the reason you can't do this?

A. You would have to drop them over the railroad crossing and drop them over a steep grade and shove them up the river front.

Q. Don't the grade run both ways from Martin Street?

A. Not from Martin Street.

Q. It runs down there, from Martin Street down towards Pine Bluff?

A. Not right in Martin Street, right close to it.

Q. Right close to it?

A. Probably a block from the flagman's shanty.

Q. You could drop cars there couldn't you, if you wanted to?

A. You could, but there would be no necessity.

571 Q. Suppose you had four cars ahead of your engine and you wanted to drop the last two cars; explain how you would do it?

A. We don't do it on that line there.

Q. You never do do it?

A. I don't.

Q. Then you never dropped any car except when it is next to the engine?

A. Yes, we drop four or five cars.

Q. I mean you never drop them unless you are going to cut them off from the engine?

A. Yes, that is the way we cut them off.

Q. Then when you do that the engine goes across a crossing right in front of the cars?

A. Not directly in front of them, part of the time it goes on the switch; maybe both of them will go across a crossing and the cars behind will go across; that is, both the cars and the engine will go across a crossing; but the crossings might be sixty feet apart, then they might be three hundred or two hundred feet apart; it is owing to where they are dropped.

Q. Is there an industry track that turns off the main line that is three hundred feet apart there—three hundred feet from the main line?

A. Not that I know of. Wait, I didn't understand you, I didn't know just what you meant.

572 Q. Take Penzel Grocer Company's track, or Plunkett-Jarrell's industry track: how far are the tracks—how far is this track from the track that your engine will pass on after you cut the cars off?

A. At the Penzel Grocery house, I should judge fifteen or eighteen feet,—just my knowledge of it, I don't remember exactly.

Q. Whereabouts is Penzel Grocer Company's switch? Is it on any crossing?

A. Just between the crossings, and I believe it is right there at Rock Street waiting room, just before you get to that?

Q. If the cars are going into Penzel Grocer Company's track, if they should be cut off or dropped in there, when they are dropped how far would they be from the track that your engine would be on?

A. You going to let the engine go down the main line?—If the engine went down the main line the cars went in the house lead towards Penzel's; is that what you mean?

Q. Yes.

A. The engine would be—well, there is quite a space in there, about eight feet,—eight or ten feet; I don't know exactly, there's a certain space; it is different at places along there.

Q. In other words, the main line and the spur track wouldn't be over eight feet apart to the crossing, would they?

573 A. This spur track doesn't go up to the crossing.

Q. It don't?

A. No, sir.

Q. If you dropped cars then you wouldn't drop them across the crossings?

A. Yes, they would.

Q. If you didn't go to the crossing how could you drop the cars across the crossing?

A. When you go to drop the cars in you jerk them across the crossing.

Q. They'd go across the crossing on the main line?

A. No, you don't get to the crossing on the main line; they'd go across the crossing off the main line.

Q. On that spur track; has that got a crossing?

A. No, sir. It is just a little distance from there, probably fifteen feet, or probably thirty feet; I didn't measure it.

Q. Then the cars would follow the engine clear across the crossing, and after they got across the crossing they would turn off?

A. No, sir, they don't follow the engine at all from the Plunkett switch. The switch where we made the drop is I guess about thirty feet.

Q. You mean you turn these cars loose and let them run a whole block there?

A. Yes, sir, they run further than this sometimes.

Q. How far?

A. They might go two blocks.

574 Q. You drop a car two blocks?

A. We don't drop it that far all the time; it depends on the grade.

Q. All the industry tracks there are almost parallel to the main line?

A. No, sir.

Q. How far away from the main line?

A. Some of them are a half a mile from the main line.

Q. A half a mile from the main line?

A. Yes, sir.

Q. Whereabouts are they along there by these spur tracks?

A. Oh, these spur tracks?

Q. Where these crossings are, where you are talking about?

A. Some of them are a block from the main line right there at Rock Street.

Q. At Rock Street?

A. Yes, sir.

Q. Which way are you going?

A. Back up the alley track, to those meat houses.

Q. To J. W. Mast?

A. I don't know.

Q. How far is Mast's store from the railroad—from where the railroad runs up to Mast's store?

A. It runs right along back of his store on the alley, right up against the building you might say.

Q. All these industries where you switch to run right along back up to the railroad?

575 A. Ask me that again.

Q. All these stores that we've been talking about where these crossings are, back right up to the railroad don't they?

A. Not all of them.

Q. Name one that don't?

A. There is a lot of stuff unloaded on the team tracks.

Q. I am not talking about the team tracks; I'm talking — the tracks that lead to these industries.

A. The tracks that lead up there to these buildings, yes, sir.

Q. Don't they back right up to the railroad track—doesn't the railroad track run right up behind these houses, right back of them?

A. Some of the houses they don't.

Q. Don't the tracks run right behind the stores?

A. Yes, sir.

Q. Take Mast's store; isn't the railroad track between there—isn't his store between the railroad and the river?

A. I don't know how far Mast's place is there, because there's some buildings between Cumberland Street and the free bridge; then this Mast building is in there, and that Gas Company, that is between that and the river.

Q. The old Gas Company is away down, on the river?

A. Not on the river, it's south of the main line.

Q. How far is it from Rock Street?

576 A. Wh-ch, the Gas place?

A. Yes.

A. Just a block.

Q. A block from Rock street?

A. Yes, sir.

Q. Where does the spur turn off that goes down to it?

A. The Gas plant.

Q. Yes?

A. The spur that we always place cars to the Gas Company leads off the main line just south of what we call, south of the free bridge, towards East Little Rock, just below the bridge.

Q. You wouldn't drop cars from up there down to the Gas Company?

A. We never did; it wouldn't be necessary.

Q. You couldn't do it.

A. No, sir, we wouldn't drop them down there.

Q. These industries that you speak of are right on the spur tracks and they run right up to the railroad track?

A. No, sir, not all of them.

Q. Where are they?

A. The industry tracks vary; some are away from the spur track a little ways.

Q. Now on Markham Street, you haven't got an industry track on this side of Markham street? (indicating)

A. On this side?

577 Q. Yes; commencing at the bridge, or commencing where the Iron Mountain crosses the Rock Island, in East Little Rock there, back to Union Station; the Iron Mountain has not got a single track south of Markham Street?

A. I think so.

Q. The spur tracks don't run back as far as Markham Street, do they?

A. I don't understand the question.

The Court: I don't understand it either.

By Mr. Kinsworthy:

Q. I will ask you if all the industry tracks that serve the stores along the Valley road from the bridge down to the freight depot, or down to Rock Street—we will say from the Rock Island railroad back to Union Station—all these industry tracks are right along behind the stores, that serve the stores?

A. We've got tracks and spurs up there that serve those people there, yes, sir.

Q. How far are these tracks to the farthest end of them away from the main line—the farthest end of these tracks—these spur tracks—from the main line?

A. Well, the Brewery track—

Q. Leave out the Brewery track.

A. Where do you want to start?

Q. We've already started.

A. Well, the Karcher Candy Company, I should judge, is a block and a half from the main line, to the end of this track.

578 Q. How far from the line where it turns off?

A. Where it leaves the main line?

Q. Any track—from any track where it turns off there.

A. Between this track and this there, there may be several tracks back here (indicating).

Q. Now say that lead that you are going to switch from onto this one, now when you switch from that track and going down this one here (indicating) about how far will that industry track there go from the track that you switch from?

A. It don't go any further than five or six car lengths.

Q. You are speaking of the main line?

A. We've got two different main lines, or leads, there.

Q. From the lead?

A. Three, or five, or six car lengths—whatever it may be, I've forgotten.

Q. How far is the farthest end—It starts off from this lead here, doesn't it?

A. Yes, sir.

Q. And runs along the side of the lead here?

A. Yes, sir all the way from it here.

Q. How far is the farthest point from the lead, the extreme end?

A. I should judge four cars.

Q. This is the lead over here where it gets over to this track there; how far is that?

A. At that point it is quite a distance, because one track—
579 that lead would go right to the left up that hill, and this track at Karcher's would come right around his building here.

Q. If you were switching to one of his buildings to that track, to

this industry track, you'd turn off from there, wouldn't you? (indicating)

A. Yes, off the lead.

Q. Now if this lead and spur track, if they both went across the crossing, how far would they be apart on the crossing?

A. Right on the street crossing?

Q. Any of them right along where we are talking about.

A. It might be ten feet between the car and the engine, at the crossing, and it might be thirty or forty, and it might be sixty, or it might be eighty.

Q. If it is sixty it would run out into the block off the right-of-way, wouldn't it?

A. No, sir, not necessarily; it might go angling across the street. It might go half way up this block here.

Q. If you've got a lead running right along behind some of these stores and have a spur track diverging from it, this spur track couldn't run over here (indicating)?

A. In some cases it does.

Q. It might — sixty feet long and never get sixty feet away from the place where you switch from, would it?

A. It depends on where the lead is and where it leaves the track.

Q. Where are they?

580 A. It might come around here; that is the candy factory, and the end of that track there I should say is over sixty feet from the Brewery lead.

Q. From the lead where is the candy factory?

A. It is located on Markham Street, I think faces Markham—Markham and Collins.

Q. Do you switch the candy factory track from the Brewery lead?

A. I have done it, from the house and from the Brewery too.

Q. Did you ever drop any cars up in there?

A. Not up in there.

Q. You can do it, can you?

A. I could do it but I never did do it.

Q. There'd be no occasion for it?

A. Well, something might exist that you would.

Q. Not what might be, but just what you do?

A. You could if you had to.

Q. It wouldn't be well to do it?

A. It would be a hard run.

Q. You've got to run too hard, have you?

A. Yes, sir.

Q. Is it necessary to drop any cars into any of these industry tracks?

A. Yes, we drop them in on the house lead.

Q. I mean you don't drop them in on the industry tracks?

A. We drop them up the lead.

581 Q. Then you don't drop them on the industry tracks?

A. In some cases.

Q. Did you ever do it?

A. Yes, sir, I have.

Q. Whereabouts?

A. Well, maybe we'd go around——

Q. No maybe about it, just what you do?

A. I can't recall a certain time right now.

Q. Can't you recollect any time?

A. No, I wouldn't be positive; I can't tell where it wa-, or when, right now.

Q. Did you ever examine the rule where it says you can't do it?

A. I know about that rule.

Q. Did you ever examine it?

A. Yes, I've read the book of rules.

Q. You've read the book of rules?

A. Yes, sir.

Q. Have you been examined by anybody on the book of rules?

A. I passed the book of rules.

Q. Tell me what rule that is?

A. I don't know just now; I don't know who examined me.

Q. Who examined you at the time?

A. I don't remember; I think I made up the book of rules last fall and it may have been a year ago.

Q. Do you know what rule it is?

A. I don't remember the number of it.

Q. Do you know what it is?

582 A. I know what the rule would say about dropping cars, that they set out there in the book of rules.

Q. Do you know the number of it?

A. No.

Q. Tell me the substance of the rule.

A. The rule says: where it can be avoided not to drop the cars unless it is necessary, if it can be avoided.

Q. Don't it say that the dropping of cars must be avoided if possible?

A. Something like that.

Q. Isn't that it?

A. Yes, sir.

Q. Now don't it say something about kicking cars, to not kick cars if it can be avoided, to push them in?

A. No, sir.

Q. What does it say about kicking cars?

A. I never seen a place in there where it said you can't kick cars.

Q. You were told that—that you mustn't kick cars?

A. No, sir, only when necessary.

Q. Now we've got to where you're dropping cars; you say you drop cars and you have told all the places where you drop cars?

A. No, I never told you all the places I drop cars; I said there were some places I couldn't recollect.

Q. You told me all the places wherever you dropped a car that you can recall?

A. Now I can't recall the time; I know we drop them all over the yards.

583 Q. Tell me another place where you dropped a car that you can't recall the time.

A. Well, sir, we drop the caboos— we've dropped cabooses fifteen or a dozen times in one place, day after day.

Q. Where is that?

A. Well, there's two different places: in the Fort Smith yards, and right up there over Main Street, what is known as Ninth Street. I didn't drop them over Ninth Street but I was told they dropped them over there, I wasn't present at all. But two months ago, I know I was over there working days at that time and I dropped a caboos at the north end of the main yard, over there what we call the cross-over. This west bound train was supposed to leave there at 11 o'clock—

Q. There's no crossing in the north end of the main yard?

A. Right in the extreme north end.

Q. Is there any watchman there at that crossing where you dropped that car?

A. No, sir.

Q. At Main Street, Argenta, where you say you dropped it?

A. I dropped one there on Fourth.

Q. I know, you told me about that; but that is a crossing which is protected by a watchman.

A. Not then.

Q. Main Street is not guarded by a watchman?

A. Not at that time; I say at the time I dropped cars they didn't have any watchman there.

584 Q. When was that?

A. That was a couple of years ago.

Q. A couple of years ago? You have not dropped any cars in a couple of years?

A. We've stopped dropping cars there.

Q. You have not dropped cars in a couple of years there?

A. I can't say.

Q. Who stopped it?

A. They stopped using that when they quit using that as a storage.

Q. Who stopped it?

A. The men stopped it themselves. The caboos is ready when you go in there now.

Q. The men just stopped it?

A. They had to drop them in there and run in there when it was on the opposite end of the caboos track.

Q. So you have not dropped one in there for two years?

A. I won't say that I have.

Q. You won't say that you have dropped one in there in two years?

A. No.

Q. You have not dropped one in there since the watchman was put there?

A. The watchman has nothing to do with it.

Q. I understand, but since the watchman was put there you have not dropped any cars there?

A. I have.

585 Q. I thought you said you had not dropped any in two years?

A. I thought you said since the watchman was placed there. The watchman was placed there in the daytime and when I dropped it it was at night.

Q. What time did you drop that caboose?

A. Well, I don't know, we used to drop them so often; it might have been between 7:15 p. m. and in the morning—anywhere from 7:15 to 6:30 in the morning.

Q. Before you had the third man you used to drop them in there, but since you've got the third helper you've quit dropping them there?

A. No, sir, we have not had the third helper two years.

Q. Since you had the third helper you have not dropped them in there?

A. We have not been dropping them in there, no, sir.

Q. Before you got the third helper you dropped them?

A. We dropped them in there if we had three or four helpers a long time ago.

Q. Dropped them there when you had two helpers, and that has not been very long ago?

A. No, sir.

Q. Did you hurt anybody?

A. I can't recollect ever hurting anybody by dropping a caboose. I can't recollect of hurting anybody.

Q. Can you recollect hurting anybody by dropping cars anywhere?

A. I can't remember.

586 Q. You would remember if you had hurt anybody, wouldn't you?

A. If it was of sufficient consequence probably I would.

Q. I understand you can't remember of ever injuring anybody by dropping cars across crossings?

A. No, sir.

Q. In your seven years and seven months' experience?

A. No, sir.

Q. Have you ever injured anybody in kicking a car across a crossing?

A. Yes, sir, I have

Q. Who was it?

A. Who was it?—It was a negro by the name of Vernon Howard, at Ninth street in the Fort Smith yards.

Q. What did he do?

A. He went to cross just at the edge of the street.

Q. He wasn't in the street?

A. He wasn't in the street but he was close to it.

Q. Don't you know that Vernon Howard wasn't on the crossing?

A. He had been, but he didn't get hit on the crossing.

Q. He was drunk and came out of that saloon, wasn't he?

A. I don't know that he was drunk; I didn't see him take a drink.

Q. Don't you know that the negro was in that saloon and *and* a fellow got after him with a six-shooter and he run out there on the track, and he wasn't on the crossing at all, and run against the side of the train and the train hit him, down by the side of the track?

587 A. I don't know whether he was in that saloon or not, he came from that direction; he came over from that building there.

Q. He came in a run too, didn't he?

A. Yes, but he stopped.

Q. Didn't you make a statement and declare that the negro run out of a saloon onto the street, or rather onto the right-of-way, onto the track?

A. I don't know; that is my knowledge of it.

Q. That he was looking back and run right in front of the car, and that he wasn't on the crossing?

A. I made a statement that he wasn't on the crossing when he got hurt, but he was on the crossing at one time. He wasn't very far from it when he was struck.

Q. You made a statement that he run out of the back end of a saloon, didn't you?

A. I might have.

Q. That he run out of a saloon and got cut off at the crossing there and turned right down the track?

A. Yes, sir, right down east.

Q. You would recognize your own writing if I should show it to you, wouldn't you?

A. Oh, yes.

Mr. Kinsworthy: Come up in the office and I'll show it to you some time.

Q. Now that is the only one that you know?

A. That is the only one that was hurt when I was working with the engine, that I ever injured that I recollect.

588 Q. Well, you didn't feel that you were to blame about that, did you?

A. No, I couldn't help it.

Q. Suppose you had a watchman standing on the crossing—standing there and this negro run up there, run onto the crossing, with this car coming down there, he couldn't have prevented the negro running down there and getting struck by the cars, could he?

A. No, not unless he had run around and got a hold of him,—caught him.

Q. He might have got a hold of him and held him?

A. Yes, sir.

Q. Then in your work in dropping and kicking cars, besides this man, you never injured a man?

A. Now I'll tell you, I have other cases; I couldn't recollect just the time,—I expect other case, but I couldn't explain it here; I couldn't say just when it was.

Q. Did you ever hurt a man and didn't know that you injured him, in your life?

A. No, the only man that I ever hurt was that negro that I was telling about; that is the only one that I ever hurt in my life.

Q. You didn't hurt him, did you?

A. No.

Q. Before you got the third man you used to handle cars just like you do now, didn't you?

A. Not in all cases.

589 Q. You dropped as many cars as you do now?

A. Did in some cases.

Q. Didn't you kick as many cars as you do now?

Q. We always classify the stuff, let whatever amount of stuff for a certain freight train,—put that in the same place; that is, the cars for the same point or destination, they would all go together. We've always done it that way.

Q. But with these two helpers you did your work just like you do now and never hurt anybody at crossings?

A. Just like I said, just like we do now, and I can't recollect how many we hurt.

Q. You can't recall anyone, only that negro?

A. I couldn't recollect at the time, right now, how it happened; I couldn't recollect how that happened. Just like getting hurt myself; I couldn't remember how it was?

Q. Did you ever get hurt bad?

A. I've got hurt once.

Q. How did you get hurt?

A. A cross tie fell off of a coal car and hit me.

Q. I thought you said you couldn't remember how you got hurt?

A. I said anymore than if I had my fingers hurt at the crossings.

Q. Did you ever get your fingers scratched going across a crossing?

590 Mr. Jones: I object.

A. Well, I know—

The Court: The objection is sustained.

By Mr. Kinsworthy:

Q. Suppose you were switching cars where there wasn't any crossings; where would you put this man, this extra man, if there wasn't any crossing there at all?

A. It depends on the amount of cars you have; and I don't place him. It is a poor man that can't place himself. If you are a switchman you are supposed to know your place.

Q. But you are a foreman?

A. Yes, sir.

Q. You are a switching foreman?

A. No, I'm not a foreman now.

Q. Well, suppose that to be a case—suppose you were a foreman; where would you place him?

A. I'd never place him; we only place them when we have a new

man that never has worked on an engine. We tell him his place would be so-and-so and he would know that will be his place; he would know his duty.

Q. How would a switchman know his place if you didn't tell them their place?

A. Simply for the reason that, say, a switchman is following an engine and performing his duty; he'd know whether to follow the engine or to go out a mile away from it, to go to some other cars.

591 Q. Then if you had three men, you'd have one man to follow the engine?

A. Yes, sir.

Q. Then there would be another man; what do you call him?

A. The field man.

Q. The field man?

A. Yes, sir.

Q. And you would be the foreman?

A. Yes, sir.

Q. You would throw the switch?

A. Some few.

Q. What would you *to* if you didn't throw the switches?

A. Give signals.

Q. You would throw the switches if necessary?

A. Not every time it was necessary, only where I could get to it, to the best interests of all concerned.

Q. The man next to the engine on the foot board, he would be the man that cut the car off?

A. The man on the foot board, yes.

Q. What would he be called?

A. He would be the man that was following the engine.

Q. The field man, what would he do?

A. He would throw the switch, or open the knuckle, or do whatever there was to be done.

Q. Ordinarily wouldn't he ride the cars?

A. In different places he might.

Q. Well on the main line?

592 A. He might catch some of the cars.

Q. Suppose you had five cars you were going to put in on the track in the main yard; who would throw the switches?

A. One of the field men; I would say the short field man.

Q. Then the other man would cut it off?

A. Yes, sir, if they were going to cut it off.

Q. Would you need anybody to ride it down there?

593 A. The long field man, we'd get him.

Q. Where would the foreman be; would he be around there?

A. He'd be around; maybe down at another track.

Q. He would be around, wouldn't he?

A. Yes, he would be around; maybe he would get on the car.

Q. He wouldn't get on the cars, would he?

A. Yes, that is what the foreman get on the cars for, to see that he does this; to see that this man rides this down.

Q. What is the reason the short field man couldn't get on the car?

A. He might in some cases get on the car.

Q. Isn't it a fact that the short field man used to attend to that, and now whichever one wants to does that?

A. No.

Q. You have no specific duty for him to do?

A. I can say that I have worked there with four men, and I say this man won't get one car out of every six that is cut off. It might vary; it depends on whether this man gets back from setting a
593 brake, or whether he stops to tie them down on another track; but I will say that the short field man won't get one cut out of every six, if they are cut and dropped into different tracks, he won't get one cut out of six.

Q. If he will get one out of six, why can't he get the six?

A. He can't get down to the switches.

Q. What is the reason the freeman can't throw the switches?

A. He can't do it; he might be standing around the curve or might get to some of the switches once in a while once in a great while.

Mr. Kinsworthy: I don't like to get into the record what he might do; I just want you to tell us what he does—just really what the facts are.

A. I just told you, that one of the two men will do that work.

Q. Then I understand that either one man will do that work, or the other one does it.

A. No, one man will ride the cars; three men with the engine can't do very much work.

Q. You did as much work then as you do now?—You did as much work before you had the third man as you do now?

A. No, sir.

Q. If the records show that you do, the records are not true then are they?

594 A. I don't know nothing about the records.

The Court: This witness will only tell what he knows.

A. I am only telling you what I know, and I am only telling you what I am capable of knowing about this, and I think I am capable of knowing how this is done.

Direct examination.

By Mr. Jones:

Q. Mr. McKay, I wish you would take this piece of paper and just show the court why it is necessary to drop a car?

Mr. Kinsworthy: He tried to show that once.

Mr. Jones: I think he did do it, too, General.

Mr. Kinsworthy: Well, what is the use of having him do it again then?

By Mr. Jones:

Q. Just tell us Mr. McKay; take this pencil and show the court how you would drop a car.

A. Say the main line comes in this way (indicating on a piece of paper); this is the main line, only it runs—it runs right down here by this building. This is a spur track. Well, you've got no way to get that car off there and you've got to run the thing by you; you don't want to head in there and leave your engine in here and have this car in here behind you; you've got to get that back far enough over this switch—this called the lead switch here (indicating)—you've got to get back here to get start enough to run this car in the clear so the engine can come back here. The engine is going up the main line, and will get to going fast enough for this car, and then this car will be cut off and let it run in this spur track here far enough to clear the main line so this engine can get back there. We've got to jerk it hard enough to get it in the clear here (indicating).

Q. Now Mr. McKay, as a practical railroad man and a practical switchman, does it at times become absolutely necessary to drop these cars?

A. Yes, sir.

Q. Does that conditions exist over public crossings in the city of Little Rock and Argenta?

A. It does.

Q. Is that because the engine is on the wrong end of the car?

A. It is.

Q. Is there any other way to get that car in there?

A. No, sir, that is the proper way of doing the work.

Q. If you operated that work, or did that work in any other way than to drop that car in that specific track, could you do the work that you've got to do?

A. No, sir, we couldn't do it like they want it done.

Q. Have any of the petty officials or any of the head officials seen you drop a car?

A. I don't know whether you'd call them petty officials or not; the yard master has done that.

Q. Who was that?

596 A. I can recollect one time that a car of stock was dropped and the yard master was looking at me; I can't call the date—just the exact date, I can't recall that.

Q. Now Mr. McKay what about riding on the side of a car when a drop of a car is made?—This man that pulls the pin, if he rides on the car is that a dangerous proposition or a safe proposition?

A. It is dangerous; you might be going by a place where something wouldn't clear you and before you could climb to the top of the car you might get to where something would knock you off.

Q. Do you drop cars over Main Street in Argenta?

A. I don't; I'm working in the Union Depot yards; I have seen it done.

Q. Have you been present when it was done?

A. It has been done when I was present.

Q. Are cars dropped over Commerce and Rock Street- in East Little Rock?

A. I've saw them dropped there every day I'm down there. I was down there the other day and was standing there about an hour and I saw three drops made.

Q. That road to the wharf, or the river—

A. Road to what?

Q. The wharf, or the river?

A. The levee track?

Q. Yes, the levee track. They are right off the river there.

597 A. That is my recollection.

Q. What about the team tracks?

A. Well, there is alley-proper, alley-one, alley-two, alley-three, alley-four, and alley-five I believe—I believe there is six; I won't say, but I believe there is six. That would be seven tracks, I am pretty sure, right in there.

Q. Did you ever see any teams drive out on the crossings, or across those crossings?

A. Oh, yes, teams work around there over those crossings going in and up to those cars all the time.

Q. Mr. McKay, did you ever have an occasion to arise where the engine pulling the car, in dropping a car, didn't go as far as the crossing?

A. The engine?

Q. Yes.

A. Well, in some cases they might not; in some cases the engine goes over the crossing just before you cut the car off, and some of them will go fifteen feet or more across a crossing; some of them go as many as a hundred feet; they would run that distance sometimes to clear the crossing.

Q. Did you ever hear anything about a boy being struck on a bicycle—a boy on a bicycle being struck by a car that was being dropped over Main Street in Argenta?

A. I don't remember anything about it.

598 Q. Do you know anything about a man being struck in switching or pushing a cut of cars across Main street, in Argenta, an Iron Mountain shop employee?

A. Where at?

Q. On Main Street in Argenta?

A. I remember one man we had hurt there this last summer.

Q. Mr. McKay, I will ask you how long was that after the Iron Mountain officials had pulled off the third helper?

A. Forty or forty-five minutes. That was just while they were changing watches from 7:40 to 7:45; I think that was in June.

Q. With reference to a flagman; are *they* any flagmen at Main Street crossing at night, that you know of?

A. I have never seen one there.

Q. Do you give a flagman a switch list when you are dropping cars?

A. We give him nothing. We might speak to him and tell him howdy-do.

Q. Is it possible to protect the crossing when you are dropping cars when you have just the three men?

Mr. Kinsworthy: I object; he's gone over that before.

The Court: Yes, he has gone over that two or three times.

By Mr. Jones:

Q. Mr. McKay, General Kinsworthy asked you about the industry track at Plunkett-Jarrell Grocer Company—asked you how many cars that would hold; I wish you would explain to the court what is meant by the Plunkett-Jarrell track.

A. I can't say—I never heard that track called the Plunkett-Jarrell track before. I would say in my judgment, my knowledge of it now, that there is no Plunkett-Jarrell track; the same track that goes into Plunkett-Jarrell goes into Scott-Meyer and to O'Leary and some others there; they are all on the same track; they've got platforms in behind those buildings all along there where we spot cars to the platforms, to those different places.

Q. Do you mean by that Mr. McKay that the Plunkett-Jarrell track furnishes cars to more concerns than the Plunkett-Jarrell Grocer Company?

A. I don't understand.

Q. This is the Plunkett-Jarrell track that he has reference to (indicating)?

A. Yes, sir.

Q. Does that furnish, or I mean do you use that to spot cars to more business houses there than the Plunkett-Jarrell Grocer Company?

A. Yes, sir, the same track is for more people than that.

Q. Now, the General asked you about the short field man riding this car: Mr. McKay, when you had a foreman and two helpers did you have sufficient men to ride the cars when you'd cut them off, whether they went across the crossings or not?

A. Not in every case; we could if it was a big cut.

Q. Did you ever do such a thing as to operate a string of cars on the road and kick two or three cuts of cars at a time; that is, cars going down two or three different tracks at one time?

A. Yes, sir, I've seen the engine have a string of cars and kick cars into two or three or four different switches, and they would be going in every direction; that is, the engine would be backing up and going ahead, whichever way they had started when they were kicking a bunch of cars and they would go down the different tracks.

Q. Now is it a customary thing to drop these cars, or is it a seldom and infrequent occurrence?

A. Oh, you do it very often.

Q. Around in various places in the yards?

A. Oh, yes, this practice is done every day.

Q. You say this is a practice and that it is done every day?

A. Yes, sir, I would say it is. I have laid off and been down around there in the day time, and I would say there is never a day but what there's cars dropped there in the yards.

Q. Is it done at night?

A. Yes, sir, I've seen it time and again at night.

Q. Now the General asked you about dropping cars in what is known as this caboose track: I wish you would please explain to the court why for the last two years you haven't dropped these cars down the caboose track?

A. Well there's a lot of rock piled up there at one time
601 when we quit using that caboose track, and as I told you, one thing when Mr. McDougal, when he come there first—no, it was after he first come there, quite a while after, we were dropping cars there, or cabooses there, and it was stopped under his administration. I don't know just when, what time it was, but we only had three of us, we only had two helpers and a foreman, and we couldn't drop the cars—couldn't drop enough cars and watch the crossings; and I think it was stopped on account that we couldn't see that crossing, and I think it was stopped then. And we don't drop the cars there, if we are not so rushed; it depends on whether we are rushed or not, whether we drop the cars there.

Q. How long since you made a drop there?

A. I don't know how long it has been; I don't know how long it has been since they quit using that as a storage, I can't say how long. I haven't been over there in Argenta for quite a while, or for several days now, and I never noticed it then.

Q. Did you ever do such a thing as to shove cars across crossings in the Fort Smith yards, the Iron Mountain yards across the tracks at Fourth and Sixth Streets?

A. Yes, sir, we do that very often.

Q. In doing that is it necessary to go over crossings?

Mr. Kinsworthy: We object.

Q. How are the tracks there located with reference to crossings?

602 A. Well when we first start to shoving them there, shoving the cars over there, there will be anywhere from one car to ten or eleven that we will shove over there when we first start.

Q. How many cars have you ever shoved around there, Mr. McKay?

A. Well, I know one time—at present I couldn't call the date—but one time I know there was forty-seven shoved around there; I couldn't tell just what date; and I think they have shoved as high as sixty or sixty-five cars around the Iron Mountain track there, the old Iron Mountain yard.

Q. Is the track straight at that point?

A. Straight where at?

Q. At Third and Sixth Streets?

A. No, sir, not so as you can tell it; it is a very sharp curve there.

Q. Is it as dangerous to shove a cut of cars around the curve— or rather is it more dangerous to shove a cut of cars around a curve than it is over a straight track?

Mr. Kinsworthy: I object to that; that is a direct question.

A. You couldn't see as far.

The Court: The objection will be sustained.

Recross-examination.

By Mr. Kinsworthy:

Q. Do you think it is a safe proposition to shove, ahead of an engine, sixty or seventy cars?

603 A. I disremember when it was.

Q. I say, do you think it is a safe proposition?

A. No, I don't know whether it is or not.

Q. What made you do it when the rules tell you not to do it?

A. We are forced to do it.

Q. Why?

A. We've got to do the work. When the yard master comes and tells you to do the work you've got to do it.

Q. Did the yard master tell you to shove sixty-five cars around the yards?

A. I don't remember now when it was.

Q. Who was the yard master that told you to do that?

A. Well, I don't remember about the sixty-five cars, and I can't remember what yard master it was.

Q. You did it and you knew you violated the rule when you did it?

A. Violated what rule? We've got to do it.

Q. It seems like you had sixty-five cars that you shoved around there and you can't remember the yard master that told you to do it?

A. I had a telephone message to go and line up these cars, from the yard master; yes, he told me to do that.

Q. It looks like you would remember his name; you remember the number of cars.

604 A. It is just like I say; I remember the number of cars when we had forty-seven but I don't remember the time.

Q. Were these crossings protected by flagmen when you shoved these cars around there?

A. They are in the daytime, but they were not at night.

Q. Was this at night?

A. Yes, I was working at night.

Q. Who was the man that told you to shove the forty-seven cars around?

A. Mr. Wachter.

Q. He told you?

A. He told the foreman and I stood there and heard him.

Q. Who was the foreman?

A. Bingham.

Q. He told him to shove the forty-seven cars over those crossings?

A. He didn't say anything about the crossings, Mr. Wachter didn't.

Q. Where was Mr. Wachter at the time?

A. Up in the Fort Smith yards.

Q. When was that?

A. It has been something like—I don't know, but I judge it has been over two years ago; I couldn't tell. It was something like two years ago; it was when Mr. Wachter was night yard master, at that time.

Q. Have you ever done it since?

A. Oh, yes, we've shoved around there other times.

Q. Who told you then? Who told you to shove around then?

605 A. This summer I remember we brought seventy-odd cars around there, twenty in one cut and the rest in the next. I remember when we did this—when we brought that particular cut in there the engine was working nights and we had to do it.

Q. Suppose you had sixty-five cars pushing around there and somebody would drive up to the crossing; who would keep them away from the crossing?

A. The third man would keep him away; he would be back there when we started back up in the yards.

Q. Would you stop and let him go down there, that sixty-five car lengths?

A. He would be down there before we started.

Q. You would send him down?

A. Yes, sir.

Q. He would run the length of sixty-five cars?

A. No, you don't get a switchman to run; it would be death for a switchman to run.

Q. If you had sixty-five cars attached to your engine and were pushing them around there, your engine and sixty-five cars would be over every crossing you've got there, wouldn't it?

A. No.

Q. How far or how close to the street when you'd start to push those cars over?

A. I've seen them start ten feet of a crossing, I guess.

606 Q. I know; but when you pushed those sixty-five cars, how far was the closest car to the street that you were pushing them over, the first street?

A. I couldn't remember how far.

Q. Give me your best recollection.

A. I don't remember.

Q. When you started to push the cars where did your engine start from?

A. It started from the Valley bridge.

Q. Away up towards the bridge?

A. Away at the upper end of the Valley bridge.

Q. At the Rock Street bridge?

A. Yes, sir.

Q. Then this man would be down a half a mile away from where you started pushing, from the crossing?

A. He might not, it depends on where he was on the car when they started.

Q. You mean the engine wouldn't be that far away?

A. I don't know what would be the length of them cars.

Q. You'd have to slack up and tell this fellow to go down and stand at the crossing, wouldn't you?

A. No, sir, wouldn't have to tell him.

Q. Where is the crossing?

A. At Ninth and at Main Street, that I have reference to that we shoved these over.

Q. Both are protected by a watchman?

A. No, sir, not then. I've never worked in the Fort Smith yards at night, or days I mean.

607 Q. How far is the crossing beyond the curve?

A. The crossing is not beyond the curve; the curve starts in right there at one side of Main Street. This is Main Street (indicating).

Q. The cars would be on the crossing when they got to the curve?

A. Not when they got to the curve; the curve starts in just a little piece from Ninth Street, I wouldn't say how many hundred feet, not many; and curves on around towards the big yards, and it continues to curve on around for three blocks.

Q. You were going back this way (indicating)?

A. Pushing back over Ninth Street this way (indicating).

Q. I thought you were pushing from the Fort Smith yards into these other yards here?

A. No, we were up in the other yards and we were coming around in these yards.

Q. In the Fort Smith yards and down into the main yard?

A. What we call the whole yards of Argenta.

Q. When the cars are on the crossing they'd be on a straight line, wouldn't they?

A. No, it's not on a straight line.

Q. You say that street curves there?

A. The curve starts in just beyond Ninth Street.

Q. Is there any road crossing after you reach around that curve?

A. Yes, sir, that is Main Street then.

608 Q. Isn't Main Street on a straight line?

A. No, sir, Main Street—well, Main Street is on a straight line, but where this leads off of the street, the track comes around kinda sideways and crosses the street, like this (referring to the blue print). There is the Fort Smith yards, here, and here is the main yards (indicating on the blue print).

Q. Now, Mr. McKay in pushing these cars in the Fort Smith yards you are going across Ninth Street on a straight line?

A. No, you'd be going down the lead and be on a slight curve there.

Q. You don't strike the lead until after you cross Ninth Street, do you?

A. We don't strike the lead; we are shoving out of the lead.

Q. Well, going over the crossing; you wouldn't strike that until after you pass Ninth Street. This is what I'm talking about (indicating)?

A. I say we shove in the yards here (indicating), and there is a lead on that right there; there's the other lead (indicating on the blue print).

Q. I'm not talking about that; I'm talking about this here (indicating). When you strike Ninth Street, don't you strike it on a straight line?

A. When this track strikes the curve it strikes it right there (indicating), what is known as track here—this 6-E, what
609 is known as 6-E just after getting over the crossing there (indicating).

Q. Now you say you wanted to drop a carload of stock down there?

A. I say we did one time.

Q. It is against the rule to drop stock, or when there's cattle in the car, isn't it?

A. Yes, sir.

Q. You violated the rules when you did it?

A. Yes, sir, I did, one of the rules, yes, sir.

Q. Did anyone except the foreman give signals?

A. Oh, yes.

Q. You all give signals?

A. Sometimes.

Q. Does the foreman throw switches?

A. Sometimes—the foreman throws switches sometimes and sometimes he's not in there and he won't throw 'em.

Q. Does the foreman cut off cars sometimes?

A. Once in a great while.

Q. Does he ever ride a car?

A. When he does it's something out of the ordinary, it's not in his line of work.

Q. What is his line of work?

A. Well, supervision of the work and to give signals, and so on.

Q. How many tracks are there in Little Rock in which it will be necessary for you to drop cars?

A. I can't say, but there's several places where it would be necessary to drop cars.

610 Q. Well, about how many?

A. I think fifteen places, in all of the yards.

Q. How many tracks have you got in Little Rock and Argenta combined?

A. Well, we'll take the shop yards. I don't know how many tracks, I think there is something like, I should say forty-five. It is that many; they've got different names now and there's new yards been built over there.

Q. In all the yards?

A. No, that is the rip track.

Q. How many switch tracks have you got in all the yards in Little Rock and Argenta?

A. There must be 375 or 475 tracks, probably 475; I can't say—I couldn't say in ten minutes how many tracks.

Q. I understand in Little Rock and Argenta there are 475 tracks?

A. Yes, sir, maybe more, and maybe a little less; I don't know just exactly.

Q. And there's about fifteen in which you sometimes drop cars?

A. I say there's fifteen different points. There'd probably be twenty-eight or thirty tracks.

Q. I mean fifteen points.

A. Ten or fifteen points.

Q. It is never absolutely necessary to drop a car, is it?

A. Yes, sir.

Q. Did you ever drop a car where you could push it in?

611 A. Not if I had it at the right end.

Q. If you had it at the other end you could push it in?

A. Yes, sir.

Q. There isn't a track in Little Rock or Argenta that you couldn't push the car in instead of dropping it if — had it on the right end of the engine?

A. There might have been a switch tore up or something, but I haven't got it on mind now.

Q. You mean there might have been a place where you could drop the cars into a track that you couldn't have pushed them in?

A. I didn't say that.

Q. I asked you if there was a single track in Little Rock or Argenta that you couldn't push a car into it if you had the car onto the right end of the engine?

A. No, you could push them in if you had the time.

Q. Where did you get these sixty-five cars that you shoved into Fort Smith yards around the main yard?

A. I don't know where we got 'em. I didn't get them; it is generally supposed that the cars coming into these yards come in from the Central Division. The cars were already brought in and lined up there when I went to work.

Q. On what track did you get them?

A. They might have come off the main line, come in there from one or two divisions; we receive them over there in what is known as the river track; come in over there over the river. They would come in there and stand for two or three hours probably before we'd get them.

612 Q. Do you know where you got them?

A. No, not at this time.

Q. How long is a box car?

A. They begin from thirty-four,—you do see some thirty-four foot cars, and some are forty-five and some are fifty.

Q. Would they average fifty?

A. They ain't all fifty foot.

Q. Would they average fifty?

A. No, I don't believe they would.

Q. Would they average forty-five feet?

By Mr. Jones:

Q. Do you know?

A. I will say I don't know.

By Mr. Kinsworthy:

Q. Well, will they average forty-five feet?

A. Well, they might.

Q. Then if you had a string of cars like the string that you were pushing around there, they would be 2,029 feet long; and you say you would be switching down in the yards and get ahold of these cars and you would have to send your switchman clear to the other end to watch the crossings?

A. I didn't say anything about him being at the other end. If we get these cars this switchman would be around there somewhere.

Q. You mean he would have to go a half a mile to get up there?

613 A. He might have to go a half a mile and he might not have to go but a quarter of a mile to get up there.

Q. Do you just sit down there and wait for that man to get up there?

A. No, we keep going forward. He may be up at the head end and he may not be, but he will get up there.

Q. When the engine is going across and pulling those cars don't it get across there quicker than the man can walk up there—couldn't the engine pull them across and get up there quicker than the man could walk up there?

Q. You'd have to pull them around the other end, and you can't do that.

Q. You mean the conditions won't let you?

A. You might have too much work and the yard master won't let you.

Q. It is a question of too much work then?

A. I don't know.

Q. It is only a case of too much work?

A. No, if you've got cars up and going back in the Fort Smith yards it takes too much time to travel around here to pull them across when you can shove the sixty-five cars across quicker than you can come around and pull them across, just for the simple reason that it takes too much time to get around here to pull them across; wherein, you could, if you had to, get another engine on the other end, if you wanted to do that.

Q. Then the only way is to just sit down and let the man
614 walk that distance, or let the engine run around?

A. No, he doesn't have to walk that distance.

Redirect examination.

By Mr. Jones:

Q. Just tell the court why you dropped that load of stock?

A. Well, sir, I would say it wasn't over ten minutes to twelve, and we's working night on the rip track in Argenta, and it had not been ten days since I got a letter from the Superintendent of Terminals—

Mr. Kinsworthy: Have you got the letter? That is the best evidence.

A. I have not got it.

Mr. Kinsworthy: I object to *gis* stating what is in the letter.

A. I wasn't supposed to keep the letter; I was supposed to mail back to the superintendent after I read it and receipted for it.

Mr. Jones: I think it is competent as he hasn't got the letter; he had to send it back.

A. I had the letter but I had to return it.

By Mr. Kinsworthy:

Q. To whom?

A. It came from the Superintendent of Terminals. And of course I understand as well as everybody else does that our superintendent of terminals reports to the division superintendent. I suppose he has it.

Q. Who was the Superintendent of Terminals?

15 A. Mr. McDougal.

Q. That has been a long time ago, hasn't it?

A. It's been a year or two ago.

The Court: Go ahead.

By Mr. Jones:

Q. Go ahead and tell the court why you dropped that car of stock?

Mr. Kinsworthy: I object.

A. The letter went on and stated that the men will not drop or kick stock in there, into tracks where there is other cars. Now it is said either at night or no time and at nowhere, and it says "under no conditions." That is just the way the letter read. And it was shoved over to me, over across the yard master's desk, by the Superintendent of Terminals, and he said "Put your signature to it". And I said "What is it?" and of course he let me read it, and I signed it; and he said, "Now, that's a matter of record." And that is all that was said.

And it wasn't over ten days after the letter came out that I came out of the rip track one night, not over ten minutes 'til twelve, when Mr. Moore was night yard master, and he told me to go down in the track—I won't say whether it was eleven, twelve, or thirteen, but it was one of them; I wouldn't say, it was one of the receiving

tracks from the south—and he said there's a car of stock in there that is first out and said "Get that and put it to the pen, and
 616 then go to supper." Well, at this time, one minute past our supper hour would give us extra time. And we come up the lead with the car behind the engine and Mr. Moore had lined up the track from the lead, and I started to go out to the southbound main line and switch over the crossing, over that way and shove it in, and he stopped me just after I got over the railroad crossing, and he said for me to drop that in there and go to supper. My intention was to run around the car and pull it out from the southbound main line over the switch and get her over the crossing and come back south upon that track and shove the car of stock in that track. But
 66, a stock track, I don't know whether it was running extra or whether it was a regular; more than likely it was an extra—was ready to leave, and it had pulled out on the main line and was standing there just over the main street, or just over the main line crossing, and I couldn't get around that way, and I had no other place to run around that car, and I got off the foot board and told Mr. Moore that I had signed for a letter sent out from the Superintendent's office which stated that we could not drop cars of stock in there, and told him that he knew the conditions, and we had quite a lot of jawing around there that didn't amount to anything after all—had a big fuss; he was holding up for the railroad's rights and I was holding up for my rights, and he said "You go on and drop that car of stock; you are getting too damn close to the
 617 chicken." What he meant by the "chicken" was he meant our supper hour. And I went on and dropped that car in there.

By the Court:

Q. Who was Mr. Moore?

A. That big, fat yard master.

By Mr. Kinsworthy:

Q. Is he the man that told you to do that?

A. Yes, sir.

Q. Is that the man sitting over there (indicating Mr. Moore)?

A. Yes, sir, that is him.

Q. The letter sent you by the Superintendent told you you must not drop stock under any circumstances?

A. Yes, sir, under no circumstances, it said.

Q. You have a contract—the switchmen have a contract with the railroad company?

A. Yes, sir.

Q. Don't that contract say the crew shall consist of an engineer, a fireman, a switch foreman and two helpers?

A. Not that I know of. I know we've got no agreement about the engineer; we haven't got anything to do with that. We don't care whether they have an engineer or fireman or not.

Q. It says the crew shall consist of one foreman and two helpers, doesn't it?

A. Yes, sir.

Q. And that is the contract you made with the company?

A. Yes, sir.

618 By Mr. Jones:

Q. You tried to get more from the company at that time, didn't you Mr. McKay?

A. Yes, sir.

Witness excused.

619 *Testimony of J. A. Mellard.*

J. A. MELLARD, being first duly sworn, and being called by the State in rebuttal, testified as follows:

Direct examination.

By Mr. Jones:

Q. Your name is J. A. Mellard?

A. J. A. Mellard.

Q. Where do you live, Mr. Mellard?

A. Little Rock.

Q. What is your business?

A. Switchman.

Q. How long have you been a switchman?

A. About fifteen years.

Q. In whose employ are you?

A. St. Louis, Iron Mountain & Southern.

Q. Where?

A. In Argenta.

Q. Mr. Mellard, I will ask you as a grievance man for the switchmen if you ever made a request of any kind to any official of the Iron Mountain Railroad asking to be relieved of the practice of pushing cars around curves?

A. Yes, sir.

Q. Who was that official?

A. Mr. Wachter, our Terminal Train Master.

Q. That is the gentleman sitting over here is it not (indicating)?

A. Yes, sir.

Q. What was his answer to your request?

620 A. As well as I remember his answer was that he couldn't make any general rule covering that, but he would relieve us on that proposition during foggy weather.

Q. Did you as representative of the switchmen at Argenta and Little Rock ever make a request of any official of the Iron Mountain Railroad for a date to talk over the matter and see if arrangements could be made about the rules of the Railroad Company that you were violating?

Mr. Kinsworthy: I object to that question.

The Court: What rules?

Q. Regarding the practice of kicking cars or pushing cars or shoving cars around the curves and over the crossings.

The Court: You may answer that.

To which ruling of the Court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

By Mr. Kinsworthy:

Q. What that for yourself or for the order?

A. I was representing the men. The men requested me to take this matter up with Mr. Mayne, and I wrote him a letter, but I didn't state what questions I wanted to take up.

Mr. Kinsworthy: I object.

The Court: Now anything you said to the officials in regard to this matter or if you have got the copy of the letter itself and can show that he received it.

By Mr. Kinsworthy:

Q. Have you the copy of that letter at the present time?

621 A. Yes. (Handing to Attorney a paper)

Q. Is this your writing?

A. Yes, sir; but the letter I sent Mr. Mayne was a typewritten letter.

Q. Is that an exact copy of the typewritten letter?

A. Yes, sir.

Q. When did you copy it?

A. That is not a copy; that is just what I dictated to the stenographer.

Q. When did you make this?

A. I made that today.

Q. Did you have the copy of the letter before you to make it from?

A. Yes, sir.

Q. Where is it?

A. I haven't got it with me, but that is just exact—there is not two words in that letter different from the other.

By Mr. Jones:

Q. But you have made this from memory haven't you?

A. Yes, sir, that is the synopsis of what was wrote Mr. Mayne.

Q. Have you a copy of the original letter that you wrote Mr. Mayne?

A. No, I haven't it with me.

Q. Do you know where that copy is?

A. I think it is in my room.

622 Q. Well did you ever receive a reply to your communication from Mr. Mayne?

A. Never have. I know that Mr. Mayne received this letter though from good authority.

Q. Anything he told you himself—

Mr. Kinsworthy: I object to all questions relative to the letter that he wrote to Mr. Mayne.

Mr. Jones: He never testified as to the contents of the letter.

Mr. Kinsworthy: I ask that the letter be stricken out, all questions in regard to the letter.

The Court: Motion overruled, as I don't consider there is anything in the record to be stricken out on that point.

To which ruling of the Court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

By Mr. Jones:

Q. Were you a regular man in the employ of the St. Louis, Iron Mountain and Southern Railway as switchman in Argenta before the law requiring them to put on the third helper went into effect?

A. Yes, sir.

Q. Now with reference to the location that the various switch engines work in Argenta and Little Rock yards; is there any particular point which each engine should work?

A. No, sir, yard engines work under the jurisdiction of the Yard Master wherever he sees fit to send them.

Q. In your opinion, Mr. Mellard, from your fifteen years' experience as switchman, is it necessary when you are switching over a public crossing to have a foreman and three helpers for the protection of the public at the crossing?

A. Yes, sir.

Q. Are you aware of the condition in the yards with reference to curves, grades and blind crossings?

A. I am in Little Rock and Argenta, thoroughly acquainted with them.

Q. Does the effect of the curve have anything to do with the number of men necessary when you are switching over a crossing at a curve?

A. Surely it does.

Q. Did you ever see a car dropped?

A. Yes, sir.

Q. Did you ever see a car dropped over a public crossing in Little Rock and Argenta?

A. Yes, sir.

Q. Do they do that there now?

A. Every day and every night.

Q. Now before you had this third helper when you were dropping a car over the various crossings in Little Rock and Argenta, was there any of the crew at the crossing to protect the public at the crossing?

A. You mean before we had the third helper?

Q. Yes, sir.

A. No, sir, we didn't have no one to send up there.

Q. Now when you are dropping a car over a public crossing do you station one of your crew at the crossing to guard it?

A. I always do that.

Q. Did you ever kick a car over a public crossing?

A. Yes, sir.

Q. Before you had the foreman and the three helpers did you have any of your crew guard the crossing?

A. No, sir.

Q. Do you have them guard the crossing now?

A. Not always, no.

Q. Do you have them guard a crossing when you are running over a dangerous crossing when there is any traffic at the time?

Mr. Kinsworthy: I object as leading.

The Court: Yes.

Q. What is the manner of guarding the crossing now when you are shoving a string of cars over the crossing from around the curve, if you do that, since you have the third helper?

A. Why we have a man stationed on the leading car, that is the forward car, and then we distribute our men out where they can give signals.

Q. Now does the curve have any effect on the number of men necessary to give signals?

A. Yes, sir.

Q. Now in common, ordinary, every day switching do you
625 make a practice of dropping cars, kicking cars or shoving cars over crossings?

A. Yes, sir.

Q. Mr. Mellard, is it necessary in order to do the switching assigned to you to do switching in this manner?

A. Kicking cars?

Q. Yes, sir?

A. Yes, sir.

Q. Did you ever have any conversation with the night yard master or any other official at Argenta in which the Yard Master said anything to you about living up to the rules of the Railroad Company in doing switching?

Mr. Kinsworthy: I object unless he gives the time and the name of the Yard Master.

The Court: Objection sustained.

Q. Did you ever, in the last three months, have a conversation with L. H. Tanner, Night Yard Master in Argenta, relative to the rules of the Railway Company in doing switching in the yards?

Mr. Kinsworthy: I object; it doesn't have any reference to crossings.

The Court: Objection overruled.

To which ruling of the Court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

Q. Did you have that conversation?

A. I have had a conversation with both of our night yard
626 masters, Mr. Tanner and Mr. Clary, in regard to violation of special instructions in dropping cars.

Q. What did they state to you at the time?

The Court: Not they, because the yard master has no right to change the rules or make the rules.

Q. Did you ever have any conversation with the night yard master, Mr. L. H. Tanner, relative to the manner in which you carry on switching in Argenta yards?

Mr. Kinsworthy: I object to that.

The Court: Objection overruled.

To which ruling of the Court in allowing the above question to be asked and in allowing the witness to answer the same the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

A. Yes, sir.

Q. What did Mr. Tanner tell you at that time?

Mr. Kinsworthy: I object to the question.

The Court: Objection overruled.

To which ruling of the Court in permitting the above question to be asked and in permitting the witness to answer the same the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

A. He said I had been railroading long enough to know that we couldn't successfully run a railroad and live up to all the rules, and I ought to have better sense.

Q. What position was Mr. Tanner holding at that time?

A. Mr. Tanner is our General Night Yard Master of the 627 Iron Mountain Railroad.

Q. At what place?

A. Well he has the Little Rock and Argenta terminal.

Q. How long ago was that?

A. That was six weeks ago I suppose, or two months.

Q. Now, Mr. Mellard, if you needed three men and a foreman to safely conduct switching operations across a public crossing in Little Rock and Argenta, what did you do before you had them with reference to the safety of the public at crossings?

A. Done the best we could.

Q. When a car was dropped across a public crossing when you had a foreman and two helpers, was a man placed at the crossing?

A. No, sir.

Cross-examination.

By Mr. Kinsworthy:

Q. Mr. Mellard, I understood you to say a little while ago that when you went to drop a car or kick a car now that you would put a man on the car to watch the crossing as it went by didn't you?

A. No, sir; I think the record will show that I always sent a man up to the crossing if I was going to drop it across a railroad or grade crossing.

Q. Did you ever drop one across a grade crossing?

A. Yes, sir, many a one.

Q. Whereabouts?

A. In Argenta at the stock yards.

628 Q. Was it loaded with stock?

A. Yes, sir.

Q. You make a rule then of dropping those cars in there loaded with stock?

A. I make a rule never to drop a car of stock unless instructed to do so by the yard master.

Q. How many times did he ever instruct you to do it?

A. Several times.

Q. How many?

A. We get past this engine on which they handle stock you know.

Q. Wasn't any danger in dropping it was there?

A. The higher officials think so, and it is against the rules; it must be.

Q. It is against the rules?

A. Most assuredly.

Q. It is against the rules to drop a car across crossings isn't it?

A. And I am very much opposed to doing it.

Q. And it is against the rules to kick a car across the crossing isn't it?

A. Why I think so, yes, but I have had it impressed on my mind more so since I have been here than before.

Q. Take the number of cars you handle, Mr. Mellard, of and on what per cent of those do you drop across a crossing?

A. Why I wouldn't drop one per cent of them. We kick them across the crossing.

629 Q. You don't drop a car once a day across a crossing do you?

A. No, sir.

Q. Sometimes you go a month and never do it, do you?

Q. The engine that I might have charge of or working on would.

Q. Take the crew you are with, you sometimes go a month and never drop a car across a crossing; is that true?

A. Some engines over there never drop one in months; others drop them every day.

Q. So you drop them every day?

A. No, sir.

Q. Does the crew that you handle drop them every day?

A. No, sir.

Q. Now how often from your experience, take your experience, you have been there a long time, how often in your experience do you drop a car across a crossing, your personal experience?

A. Well I haven't dropped one in some time.

Q. Just take your own work, not somebody else, how often would you drop a car across a crossing?

A. Myself.

Q. Your crew you are with?

A. As I stated—

Q. Take the crew you are with, how often does your crew that you have been with drop a car across a crossing?

A. Why that would be almost impossible to answer.

Q. Well you have been there fifteen years.

630 A. We have dropped several of them in the last ten days.

Q. Just give me on the average?

A. Most of it is stock.

Q. Give me an average how often you do it?

A. I think we dropped two cars last week.

Q. Now how often would you do that?

A. Well we do that just as often as necessary; now I am not foreman.

Q. I thought you were foreman?

A. Well I have been up to about two weeks ago.

Q. But it is very seldom that you do that, in the amount of switching you do it is very seldom you drop a car across a crossing isn't it?

A. The most of the cars dropped probably is in the stock pens and across Rock Street crossing; have to drop them across Main Street to get it in and across Rock Street, and that is about the only two points that I know it is frequent to drop cars.

Q. There is a watchman at both places isn't there?

A. Yes, a white man flagman at Argenta and a one armed negro man at Rock Street in the day time from seven to six; at Rock Street there is a day and night man there.

Q. There is a man at Rock street day and night?

A. Yes, sir; that is the only two points I believe.

Q. You say that is the only two points you drop cars?

A. I say that is the most frequent points we have to drop cars.

Q. In addition to the white man at Main Street in Argenta
631 there is a viaduct isn't there?

A. Yes, sir, there is a viaduct there, but nobody goes there; they all go under it.

Q. Do you state nobody goes over that viaduct?

A. Very few. The Railroad Company spent thousands of dollars to get that viaduct, and have asked the City of Argenta to close that crossing. Then we built an extension to our depot, but the people at Argenta have never closed that crossing, and the people go over there by the hundreds and thousands a day.

Q. You say an engine may work anywhere. Before this law was passed the testimony here shows three or four engines had three helpers on them anyway?

A. We had two engines.

Q. Where di- they work?

A. That was the hold engine nights and the south engine both day and night.

Q. Whereabouts did they work?

A. Well the south engine works down at the shops in front of the Y. M. C. A., what we call the south end. The hold engine works up there in front of the yard office.

Q. Then the very crew you had with the fourth helper each before the law was passed didn't work over crossings did it?

A. We had four men there for years until they pulled them off a short time.

Q. Answer my question.

632 A. Yes, sir.

Q. Yes, sir, what?

A. Well the south end there is no crossings.

Q. But the very engine you wanted the fourth man on and that you had the fourth man on before the law was passed didn't work across crossings did it?

A. Why the south end, no, sir.

Q. Where the four men were it didn't work across crossings did it?

A. The south end?

Q. Yes.

A. Why that is a gravity yard; you have to ride cars.

Q. But it didn't work across crossings did it?

A. No, sir, no crossings; no public highways in the south end of the yard.

Q. Did you drop as many cars or kick as many cars across crossings before you had the third man as you do now?

A. I couldn't say.

Q. Answer that question?

A. I don't think we did, no sir.

Q. Didn't drop as many then?

A. No, sir, because our business has gradually picked up all of the time. You see our business went to the bad; that is one reason they pulled the fourth man off, and it has been picking up for the last year or two. We are working more engines now than we worked since the panic. We are handling more cars too.

Q. To the engine?

633 A. It is an absolute fact; if business didn't justify it the Company wouldn't work the engines.

Q. One engine has no more cars now than before does it?

A. I haven't got the reports. I don't know exactly the number of cars they handle.

Q. You don't know do you?

A. No, sir.

Q. Now in proportion to the work before this man was put on and now do you drop any more cars or kick any more cars across crossings now than you did then?

A. We are kicking more cars, *yes*, sir.

Q. Whereabouts?

A. Now it is like this—we don't switch all together over public crossings.

Q. I am talking about public crossings?

A. Yes, we are handling more ~~across~~ public crossings than we have because our business is heavier.

Q. But do you kick more across the crossings in proportion to the amount of work than you did before the third man was put on?

A. Yes, sir, because our business is heavier.

Q. But I mean in proportion to it. Now how many cars have you dropped across the crossing in the last month?

A. I didn't keep any record of that because I didn't know I would have to answer it.

Q. Just give the number if you can?

A. To tell you the truth about it the engine I work with I don't remember—

634 Q. Talking about your engine?

A. The one engine I am working with I know we dropped two cars last week.

Q. How long before that you dropped one, can you tell?

A. No, sir.

Q. Say that, if you cannot remember?

A. No, I cannot remember, I cannot remember the dates.

Q. You cannot remember doing it at all can you?

A. I remember off and on we have dropped cars every few days.

Q. You don't drop one car in a thousand that you handle will you?

A. No, it is not necessary.

Q. When you said that an engine will work anywhere and everywhere in the yard, won't an engine assigned to the south end of the yard work there all night as a rule?

A. As a rule, as a general proposition, yes.

Q. And the engine working in the hold as a general proposition will work there all night won't it?

A. Yes, sir.

Q. And the engine working in the Argenta yard as a rule will work there all night won't it?

A. No, sir, they will work there part of the night; then they will go to the hold and go to the stock pens; in fact the south end will go to the stock pens.

Q. Whenever an engine goes out to work it is assigned to a certain territory?

635 A. It is assigned to a certain territory, but a part of that work will take them out of that territory.

Q. But the majority of the work the engines are assigned to that particular work aren't they?

A. Yes sir, we have certain names for them.

Q. And the engines that had the four helpers before the law went into effect were assigned to do the work where there wasn't any crossing?

A. We never had four helpers.

Q. A foreman and three helpers?

A. Yes, sir.

Q. They were assigned to the work where there wasn't any crossing wasn't they?

A. In the south end that was and that is about the only one, and as I said they have always stayed there.

Q. State yes or no.

A. How was that question?

Q. I asked you before the law passed if the engines that had the foreman and three helpers were not assigned to do the work where there were no crossings?

A. There is no crossings in the south end.

Q. Answer my question, if they were assigned to do the work where there were no crossings?

A. No, they were not assigned to do the work where there were no crossings.

Q. They were not?

A. No.

Q. Why you said at the south end there wasn't any crossings?
636

A. If the yard master wanted the south end to go anywhere else he could send him up there.

Q. But he was put in the south end to do that work wasn't he?

A. Yes, sir.

Q. To facilitate the work he was given the fourth man?

A. Yes, sir.

Q. Not to protect any crossings?

A. No crossings there to protect.

Q. Did you ever hurt a man in dropping a car across a crossing?

A. I don't remember ever hurting anyone since I have been in the yard.

Q. Fifteen years?

A. I mean since I have been working here.

Q. How long have you been working here?

A. I came here in 1905, and I went away and stayed ten months; then I came back in 1907 and been here ever since.

Q. Did you ever hurt a pedestrian or some traveler by cutting a car across a crossing?

A. Yes; you remember the time they cut that negro's leg there at the Valley depot. I was working on the crew but didn't know anything about it.

Q. He wasn't at a crossing though.

A. No; and he didn't get nothing either you will remember.

Q. He wasn't at a crossing was he, Mr. Mellard?
637

A. If you remember, Mr. Kinsworthy, he was standing there right in front of the Valley depot; they proved he was trespassing.

Q. He wasn't at a crossing?

A. No, he wasn't at a crossing.

Q. Then you never hurt a man by either kicking or dropping a car across a crossing there during all of your work there?

A. In the engine I was working on I don't remember ever hurting a man. The only man I ever seen hurt over there, and I didn't have anything to do with that, was that negro.

Redirect examination.

By Mr. Jones:

Q. Do you know of anyone that has been hurt on a public crossing, Mr. Mellard.

A. Yes, I know of several.

Q. By cars being pushed and kicked across the crossing?

A. No.

Q. Do you know of any of them being hurt on a public crossing in Little Rock?

Mr. Kinsworthy: By a switch engine crossing a public crossing.
Mr. Jones: Yes sir.

A. I couldn't recall the names now and the dates.

Q. Not necessary to refer to the names or the times, Mr. Mellard, but do you remember of anybody being hurt on a public crossing by switch engines?

638 A. On the crossing?

Q. Yes, sir.

A. Why I remember a woman got run over there, but I don't think that was on the crossing. Then there were two or three hit there at Main Street. I don't remember the names and I don't believe here that would be competent; although I know it happened, I don't believe I could convince the court the evidence would be sufficient.

Q. Have you, or have you not, observed other crews dropping cars over public crossings in Argenta and Little Rock?

A. Yes, every day.

Q. Tell the court, Mr. Mellard, how frequently is that an occurrence?

A. It is a daily occurrence.

Mr. Kinsworthy: I object to that.

The Court: There was evidence on which to base that preceding question. Objection overruled.

To which ruling of the Court in permitting the above questions to be asked and in permitting the witness to answer the same the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

Q. Have you or have you not observed them dropping cars across Main Street in Argenta in the last week, to keep from making a non-air?

639 A. Now I don't remember that exactly; I know they dropped it over there, I don't know why.

The defendant objected to the above question and answer, but the court permitted the same to stand, to which ruling of the Court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

Q. Now, Mr. Mellard, have you had the opportunity to observe other switch engine crews working on the various crossings in Little Rock and Argenta?

A. Yes, sir.

Q. Have you had an opportunity to see whether or not they kick cars across the various crossings?

A. Yes, sir.

Q. If they do that will you state to the Court how frequent or infrequent is that occurrence?

A. Why it is a daily occurrence, both at Rock Street and at East Little Rock and in Argenta.

Q. I wish you would tell the court as to whether or not that method

of switching is a method adopted by some of the switching crews, that some of the switching crews carry out daily?

A. That is a method to expedite the work. We haven't got time to shove these cars when we can kick them in three times as fast. We give them a start and kick them in on the different tracks.

Q. You state that is a method of saving time?

640 A. Most assuredly.

Q. Does it require all of your time, Mr. Mellard, or does it not—

The Court: That is very leading and suggestive.

Q. What percentage of your time switching as you do, dropping, kicking or shoving cars, does it take to perform the work that is assigned for you to do?

A. Ten hours' actual service, work all of the time.

Q. How much time do you get paid for?

A. We get paid for ten hours, and we get paid for all over ten hours that we work.

Recross-examination.

By Mr. Kinsworthy:

Q. You would get paid for ten hours a day if you didn't make but one switch wouldn't you?

A. Yes, sir.

Q. In other words when you go to work in the morning if you don't have work but for but one hour you get paid a full day?

A. Yes, sir.

Q. Then when you work all day you just do then the work you can do?

A. The Railroad Company don't work an engine unless they have got plenty for you to do.

Q. You just work ten hours and that is all you have to do isn't it, your day's work is up?

A. Yes sir, we have to hurry up sometimes to get through.

641 Q. Suppose you don't get through what do you do?

A. Well we just do all we can.

Q. You just operate ten hours and quit don't you?

A. Yes, sir.

Q. Now you say you haven't dropped but two cars along back as far as you can remember?

A. No, I didn't say that. I said we dropped two cars last week.

Q. You couldn't tell me when you had dropped any more?

A. No, I couldn't tell you the day we dropped those.

Q. Now, Mr. Mellard, isn't the only places you drop cars to amount to anything at Rock Street and Main Street crossing where you have watchmen?

A. Why those are the two principal points.

Q. Can you tell me where you ever saw a car dropped at any other points across a crossing?

A. Not lately, no.

Q. Well you couldn't mention one any time could you?

A. No sir, I couldn't give you the dates; only I know I have seen it.

Q. Do the other fellows drop cars oftener than you do?

A. Why some of them do I expect, because I don't ever drop one unless I have to.

Q. How do you know.

A. From observation.

Q. Now where do you generally work your engine, most anywhere?

642 A. Why I have been working nights for the last four or five years.

Q. Whereabouts do you generally work?

A. I worked that Union depot engine over there about a year.

Q. That is over at the passenger depot?

A. Over at the passenger depot.

Q. If you are working an engine at the passenger depot to what point would your work extend?

A. To a little track that runs down there and goes up there by the Water Works; it has several industries on it; and maybe out to the brick yard, 15th Street.

Q. Would you see any other switching crew while you were working down there?

A. No, sir, I wouldn't see any other switching crew while I was working down there.

Q. How could you observe what the other fellow was doing?

A. I don't claim to have observed when I was over there.

Q. You say you observed them daily?

A. I used to go around through the yards there.

Q. But you are not around there daily when you are off with your switching engine doing that work, you cannot observe another engine can you because you are not in the same territory?

A. No sir, I don't observe anything any more than Mr. Dean or Mr. Murphy when they are not around.

Q. When you work you work all night don't you?

643 A. Yes, sir.

Q. When you are with your engine you don't know what the other switching crew are doing do you?

A. No sir, unless I happen to be around them, which I am sometimes.

Q. In the day time you are not in the yards are you?

A. No, sir.

Q. You go home and go to sleep?

A. Well unless I am over there on business or something like that.

Q. It is very seldom you would go over there on business after you have been working all night?

A. I am generally over a day or two out of the week.

Q. Where would you be if you went over there on business?

A. Around the yards somewhere.

Q. Wouldn't you go to the office?

A. That is where I would go.

Q. Where is that?

A. Close to Main Street in Argenta.

Q. Would you go there or up to the shops?

A. Why I would as a general rule see nearly every engine around there, speak to the men working on the engines and go on to East Little Rock.

Q. Just to visit with them?

A. No, business; cross the free bridge to see them. I might go out to see them about something.

Q. If you were up there at the office you couldn't see
644 people dropping cars over there could you at Rock Street?

A. No, sir.

Q. Isn't it very seldom that you see the other engine working at all?

A. Why no sir.

Q. If you are working you say you don't see them?

A. Not when I am working, no sir.

Q. Now when you are not working how often do you go over there in the day time?

A. Once or twice a week.

Q. What do you go over there to do?

A. Why that is a kind of a personal matter you know.

Q. What kind of business do you go to attend to, if it is anything private of course I don't want to know?

A. I am the Grievance Committee man you know.

Q. How long do you stay there?

A. Well I sometimes may be around the yard office there several hours.

Q. If you are on the Grievance Committee and go over there about a grievance whom do you go to see?

A. I sometimes go to see Mr. McVan or Mr. Wachter.

Q. When you are there you are attending to business with them?

A. When I go there I often don't get to see them at all; they haven't got time.

Q. Then you go home?

645 A. I stay around there sometimes several hours waiting.

Q. These switchmen don't stop and talk to you when they are at work?

A. No, sir.

Q. Unless it is that third helper?

A. That third helper is about the busiest man on the job working there.

Q. The other fellows lay off from working don't they?

A. No sir, there is plenty of work there for all of them to do if they will do it.

Q. During the long period you switched cars there with a foreman and two helpers you never had any accident at the crossing at all?

A. No, sir.

Q. Before you had the third man?

A. I don't know whether we had a third man or not when we cut that negro's leg off.

Q. That wasn't a crossing?

A. No, sir.

Q. Ia am talking about at a crossing?

A. No sir, I said I had never been an engine man over there or on the crew and hurt a man at a crossing.

Witness excused.

646

Testimony of J. W. Holt.

J. W. HOLT, being first duly sworn, and being called in behalf of the State in rebuttal, testified as follows:

Direct examination.

By Mr. Jones:

Q. What is your name?

A. J. W. Holt.

Q. Where do you live, Mr. Holt?

A. Pine Bluff.

Q. What is your business?

A. Switchman.

Q. How long have you been a switchman?

A. 21 years.

Q. In whose employ are you at the present time?

A. Cotton Belt.

Q. At Pine Bluff?

A. At Pine Bluff.

Q. Mr. Holt, in your opinion as an expert witness, does the protection of the safety of the public at the various crossings of the Cotton Belt yards in Pine Bluff require that each switch engine be equipped with a foreman and three helpers?

A. Yes, sir, where they work over crossings.

Q. Are you aware of the condition in the yards with reference to curves and grades and blind crossings?

A. I am.

Q. Do you have any of those conditions in your yard in Pine Bluff or do you not?

A. We do.

647 Q. Just explain to the Court what you mean by that?

A. We have five blind crossings and two curves; one reverse curve.

Q. Now is there any difference in pushing cars around a reverse curve than on a straight track?

A. Considerable.

Q. Does the performance require the help of more men?

A. Yes, sir.

Q. Do you ever do such a thing in the yard at Pine Bluff, Mr. Holt, as dropping a car?

A. We do.

Q. Do you drop those cars over public crossings?

A. Yes, sir.

Q. You have three men there have you not, a foreman and three helpers?

A. Yes, sir, on all but two engines, one night and one day.

Q. Can you protect or can you not protect the safety of the public at the crossings when you drop a car over a crossing with three men and a foreman better than you can with two and the foreman?

A. Sure you can.

Q. What is the practice of the switching crew with reference to guarding the crossing when a car is dropped over it?

A. You mean the way the work is executed?

Q. Now under the law?

A. There is one man protects the crossing.

648 Q. One man guards the crossing?

A. Yes, sir, one protects the crossing and the other three perform the regular duties as before.

Q. Now before you got the foreman and the three helpers what was the condition then regarding the protection of the crossing?

A. The crossing was unprotected.

Q. Did you ever do such a think as to kick a car?

A. Yes, sir.

Q. Over a public crossing?

A. Yes, sir.

Q. What is the difference now with reference to the guarding of the public crossing to prevent accidents to the public and before you had the foreman and the three helpers?

A. I never had an accident.

Q. Well is there any difference in the way the crossing is protected now?

A. Oh, yes.

Q. What is the difference, Mr. Holt?

A. Why when we are working over dangerous crossings we are protected by switchmen, except two crossings that are protected by a flag.

Q. Do you station one of your switchmen at the crossing?

A. Yes, sir.

Q. How many hours are you supposed to work?

A. Ten hours constitute a day's work.

649 Q. How much of that ten hours does it require you to do your work switching the way you do, dropping, kicking and shoving cars?

A. From ten to twelve hours.

Q. Are those conditions that you speak of, dropping and kicking cars, are they simply extraordinary conditions or are those conditions that arise in every day life in switching?

A. That is conditions that has been so since I have been a switchman.

Q. How many crossings are there in Pine Bluff?

A. Thirty I believe.

Q. Did you hear the gentleman from Pine Bluff, Mr. Richards, testify this morning as to the crossings?

A. Yes, sir.

Q. I believe he testified, Mr. Holt, that 7th, 8th, 9th or 10th, those weren't opened yet. You state there is thirty crossings in the Pine Bluff yard; did you include in that number this 7th block crossings?

A. I included from Missouri to 6th street.

Q. Are any of those crossings opened?

A. Two of them aren't open across the main line but open across the industrial tracks.

Q. I hand you a paper here, Mr. Holt. (Handing paper to witness).

By Mr. Kinsworthy:

Q. Did you make that, Mr. Holt?

650 A. No sir, I did not.

By Mr. Jones:

Q. Do you know what that is a map of?

Mr. Kinsworthy: I object unless he helped to make it.

The Court: Objection sustained.

Q. Now, Mr. Holt, will you tell the court whether there are or whether there are not tracks, industries and spur tracks in the yards at Pine Bluff, that cars cannot be used in those tracks any other way than dropping them, that is no practical way.

Q. Well now there is none there but what can be shoved in, but there is tracks there they have to be dropped in for the convenience of the work.

Cross-examination.

By Mr. Kinsworthy:

Q. Mr. Holt, you say there are five blind crossings?

A. Yes, sir.

Q. Whereabouts are they?

A. The crossing at Marko Mills, Marsh Commission Company and Alabama Street, the track running between the two freight houses, Main Street, and the crossing between the old power house and Hammet Cotton Warehouse. This one at Hammet is blind on the industrial track.

Q. I believe you have named the five what you call blind crossings. You say you have the first blind crossing at Marko Mills?

A. Yes.

651 Q. Whereabouts is that, Mr. Holt?

A. It is between Third and Fourth Avenue and I forget what street.

Q. Do you drop any cars in there?

A. No, sir.

Q. Do you kick any in there?

A. No, sir.

Q. You state that there is a blind crossing at Marsh Commission Company?

A. Yes, sir.

Q. Do you drop any cars in there.

A. No, sir.

Q. Do you kick any in there?

A. No, sir.

Q. You state there is a blind crossing at Alabama Street. Do you kick or drop any cars in there?

A. No, sir.

Q. You state there is a blind crossing at Main Street. Do you kick or drop any cars in there?

A. No, sir.

Q. You state there is a blind crossing at the old Power House, what you call the Hammet Cotton Warehouse. Do you kick any cars in there?

A. We jerk cars, drop cars into that track, but the switch is about two blocks from that blind crossing.

Q. You don't drop any across the crossing?

A. Not at that crossing.

652 Q. Then there isn't a blind crossing in Pine Bluff where you kick or drop cars across it?

A. No.

Q. Now what do you mean by a blind crossing, Mr. Holt?

A. Where the track is obstructed by a building or some obstruction; the view is obstructed from the public or the trainmen.

Q. From the trainmen?

A. Yes, sir.

Q. Now at either one of these crossings can't a man see down the track?

A. He can see down the track, but if a pedestrian was approaching the crossing he cannot see the train until he was right on the crossing.

Q. Both ways?

A. Not all of them, no, sir.

Q. How far is the building at these points from the near rail?

A. At Marko Mills it is about four feet; Marsh Commission Company the same, and at Alabama Street it is about six feet or four feet.

Q. How far is the building from the main track at those places?

A. Well the Marko Mills and the Marsh Commission Company are not on the main line; that is what is known as the elevator track or industrial. Marko Mills is an elevator.

653 Q. Now how many cars do you handle generally in going to one of these mills; you don't handle any at Main Street at all?

A. We do; all of our switching for that elevator comes in at Main Street.

Q. But you don't do any switching at Main Street?

A. Yes, that is all shoved in there.

Q. Does the street turn off at Main Street?

A. No, it turns off at Pine Street, but leads right through Main Street.

Q. How many cars do you handle as a rule when you are serving Marko Mills?

A. One to fifteen.

Q. How many to the Marsh Commission Company?

A. The same thing.

Q. How many to Alabama Street?

A. The same thing.

Q. One to fifteen at all of these points?

A. Yes, sir.

Q. Now when your cars are made up for you to deliver up town they are made up on track number 11 aren't they down in the yards?

A. All city cars are parked in number 11, and the switch engine switches them as they use them.

Q. Aren't they made up in the yard in which they are to be placed?

A. No, the switch engine does that.

654 Q. It places them before they start up town with them?

A. As much as possible.

Q. In other words the switch engine goes down there and places those cars in the string the way you want them placed in the order he is going to use them on the track?

A. As much as possible.

Q. Then when they get hold of them they just shoved the cars on the tracks?

A. No, sir.

Q. How do they get them in there?

A. There is three places we have to make a drop of them.

Q. Whereabouts?

A. All stuff going into the track known as Holmes' track or Barlow's has to be dropped in there.

Q. What other places?

A. Into this place I just mentioned in the Hammett Warehouse.

Q. What other places?

A. I believe that is all.

Q. Two places. There are two places now where you sometimes drop cars?

A. Yes, sir.

Q. Now this Holmes track, you say you drop cars there?

A. Yes, sir.

Q. Is that a crossing?

655 A. The switch is about 75 feet from a crossing, north of the crossing.

Q. If you are going to drop a car there would the engine pass over the crossing in front of the car?

A. Yes, sir.

Q. Then after you cut the car off the engine the engine would go in front and there would be the engineer and fireman to keep a lookout?

A. Yes, as much as they could.

Q. Cannot they see down the track?

A. He cannot see the cars as good as he could the engine.

Q. But the engineer and fireman could stop?

A. That wouldn't stop the car. You see the engine is only a few feet ahead of the car.

Q. But anybody coming along there could see those things coming couldn't they?

A. It is more dangerous to watch two cars moving than it is one; that is why it is so dangerous to drop a car over a crossing?

Q. Did you ever hurt anybody in your experience in dropping a car over a crossing?

A. I never hurt but three men in all my experience.

Q. Did you ever hurt anybody by dropping a car across a crossing?

A. I never did.

Q. Did you ever hurt anybody by kicking a car across a crossing?

A. Never did.

656 Q. How long have you been there?

A. Pine Bluff?

Q. Yes?

A. The 19th of this past February six years.

Q. You did that, dropped cars across the crossing and kicked them across the crossing before you had the third helper and you never did hurt a man?

A. Never did.

Q. Is it against the rules of your Company to drop cars across a crossing or kick cars across a crossing?

A. I am told so. I have never seen a rule book. I have been told that and taught that from my first railroad experience.

Q. But still you did it?

A. Yes, sir.

Q. But you always do it with safety don't you?

A. As much as possible.

Q. And you did it with safety before you had the third man?

A. As much as possible.

Q. It always was safe wasn't it?

A. I couldn't consider it so.

Q. You never hurt anybody?

A. Never had.

Q. Before you had this third man you did it and never hurt anybody?

A. I never hurt anybody.

657 Q. When you start to town with a cut of cars from the yards, do you pull those cars up town or push them?

A. Pull them.

Q. Do you ever push cars up there?

A. No sir, push them back.

Q. When you pull them up there then don't you push them into the tracks where they belong?

A. Except these two places I mentioned.

Q. Couldn't you push them in there?

A. Not unless you had them on the right end of the engine.

Q. Could you go on the other end and push them in?

A. By taking the time.

Q. Wouldn't it take just a little time?

A. It would take considerable time under the circumstances. Sometimes the yard is congested and other engines have the lead occupied and you cannot get around.

Q. When you are dropping those cars into these tracks where do you place them in there?

A. Well at the present time you speak of.

Q. Yes, and before too?

A. Well at the present time the long field man is on the crossing; the short field man rides the cars; the pin puller as he is called cuts the car off; and the foreman throws the switch.

Q. Couldn't the same man that cut the car off ride it?

A. He could by great danger to his life and limb.

658 Q. Did he use to do it?

A. I never did it.

Q. Are you a switchman or foreman now?

A. Switchman.

Q. You are not a foreman?

A. No sir, only extra foreman. They use me in case of emergency.

Q. Now these cars for the different industries they are lined up on the main track aren't they before you start with them?

A. Yes sir, on the lead to the various tracks; get them in order as much as possible.

Q. You say the string of cars you haul is from one to fifteen cars?

A. On this elevator track.

Q. For the others then?

A. We handle from one to thirty.

Q. Where do you handle thirty cars to?

A. From what is known as the crossing up to the yard, up to the train yard, the main yard. We generally deliver them into a track though called Dewey; that is an auxiliary track.

Q. I mean to the industries?

A. Well that varies from one to thirty.

Q. What industry track do you handle thirty cars to at a time?

A. No one industry.

659 Q. Well how many cars do you generally handle to one industry track?

A. From one to five.

Q. Well now in any of those points you spoke of why couldn't three men give signals for five cars?

A. With five cars?

Q. Yes?

A. Well yes, if that is all they had.

Q. If you had five cars he could give the signals al- right couldn't he?

A. Some of those tracks have two or three industries on one track?

Q. Take a track with three industries having five cars for each one industry, that would make fifteen wouldn't it?

A. Yes, sir.

Q. Which one would put in first?

A. The one the occasion demanded.

Q. The farthest away down the track?

A. Not necessarily so.

Q. If the industry track handles three industries and you put in the cars to the first industry, how would you get them down to the next one?

A. You will have to give me a plat of how the industry stands.

Q. Are those industry tracks what are called sub tracks?

A. Not necessarily so.

Q. The one that you say serves three industries is it a sub track?

660 A. Yes, sir.

Q. If you are going to put those cars in you would have to put the first cars in down at the end of the track?

A. Yes, sir.

Q. Then you would have to come back and put five in the next if you have that many?

A. Yes.

Q. Then five in the next?

A. Yes.

Q. Then you make three switches with five cars each time?

A. Any time they would be in order and shove them in.

Q. I asked you if you had them in order and you said no?

A. I don't understand the way you mean.

Q. Then if you come into that track with fifteen cars and five cars for the three industries, you would have them all in order?

A. Yes, sir.

Q. And the only thing you would do would be to push them in?

A. If there was no switching had to be done, probably other cars had to come out.

Q. You would take them out before you started in?

A. No sir, not necessarily; that is not practical.

Q. You would put these cars on top of the cars that are in there and pull them all up another—

A. You go in there and what cars are coming out you bring out and shove back if occasion demanded. That is not in every
661 instance; the circumstances govern the work.

Q. Isn't it a very rare occasion, Mr. Holt, that you drop a car?

A. We don't drop one every few minutes.

Q. How long has it been since you dropped a car?

A. I couldn't answer that. I think the day I lay off to come to Court we dropped three.

Q. Whereabouts?

A. We dropped two into Barlow's. We dropped four, two into Barlow's and two into Hammet's.

Q. Those at Barlow's track across the crossing was it?

A. Yes, sir.

Q. What track is it on?

A. Barlow.

Q. Yes.

A. It is on what is known as Holme's track.

Q. How long before that did you drop any?

A. I don't keep a record of it.

Q. Can you remember it?

A. I could remember, but I couldn't explain it to you so you could make a record of it.

Q. Do you remember how long it was before that?

A. Not exactly, no sir.

Q. When did you kick a car across a crossing?

A. I couldn't tell you that; that is an every day occurrence.

Q. Whereabouts?

662 A. Over Alabama Street.

Q. What point?

A. Over Alabama Street and Third Avenue.

Q. What do you kick them into?

A. From the team track to the elevator or from the elevator to the team track.

Q. That is down to the freight house isn't it?

A. Right opposite the freight house.

Q. The freight house yards?

A. Yes, sir.

Q. You are not kicking them across crossings are you?

A. Yes, sir, Alabama Street.

Q. You always have done that haven't you?

A. Why, yes.

Q. Now take these industries you are talking about, how *now* many cars do you handle to them a day?

A. Sometimes it is one or two and other times more.

Q. Well on the average?

A. Oh, I don't know. There is Riley, they sometimes handle as high as five to eight. Marko Mills handles from one to six; and Swift and Marsh, they handle about the same; and Marsh and Swift not so much, about six cars a week would fix up Swift I suppose.

Q. That is one car a day?

A. Yes, sir.

Q. The other fellow would handle how many?

663 A. Riley; he handles on the average I guess of about six to eight cars a day; about six cars a day, that is in and out.

Q. And the other one?

A. About the same.

Q. About three cars in?

A. Going in and out about six cars.

Q. That would be about three going in?

A. Yes sir, and three out.

Q. The others about how many going in?

A. Marsh don't amount to much.

Q. You wouldn't have a car a day would you?

A. Marsh, no sir.

Q. Who else?

A. That is all I think.

Q. That would be four cars and a piece of one day going in?

A. That is on the average.

Q. Well that would be the maximum amount?

A. I never did make no records of it, I couldn't tell you.

Q. You are familiar with it and have been there a long time.

A. Yes.

Q. And the cars probably they would handle in there to just three industries a day?

A. You mean how many is the most they could handle or they do?

664 Q. That they do?

A. Well we handle as high as about sev-n cars at Riley's in and out.

Q. I mean in.

A. I couldn't tell you the figures on it.

Q. Wouldn't on an average six cars a day be as many as you would handle in there?

A. As many as I do?

Q. Yes, for those three industries?

A. No.

Q. You said one of them would handle one on an average and the other three?

A. Well on the average that might do.

Q. On the average about four and a half cars?

A. Yes, something like that.

Q. Then you wouldn't take five cars out?

A. Not unless they needed them and was going up there. The average wouldn't have nothing to do with that you know.

Q. The amount of cars a man will use don't have anything to do with the amount of cars you put on his track?

A. Some days come he works full capacity and other days he don't do anything.

Q. But you say that at an average three of them don't handle more than four cars?

A. No, I don't say not more, but I said that was about what I thought.

665 Q. You wouldn't put in any more than they would want would you?

A. No, sir.

Q. If they didn't handle more than four cars in they wouldn't handle more than four cars out?

A. Wait a minute; that elevator track is used as a team track too. There is a great many days five and six cars on that track team track work as well as this industry work. Are you figuring on the

cars handled in and out of that track; that track is used as a team track as well as these mills.

Q. How many trips would you make backwards and forwards to the yards a day in handling these industries?

A. That varies.

Q. Give an average.

A. About three or four in the morning and about three or four in the afternoon to those.

Q. You make those trips a day?

A. About that.

Q. During that time you would put in four cars and take out four?

A. Some days and some days I wouldn't. You see we have other industries besides that one track.

Q. How did you used to do that before you got the third man?

A. In what reference?

Q. Kicking across crossings?

666 A. The best I could.

Q. Tell me how you did it?

A. You mean with reference to safety?

Q. Yes.

A. I trusted to good luck.

Q. You always had it didn't you?

A. I have so far, yes sir.

Q. Did you have a rabbit foot?

A. No sir, I have a **Maker above**.

Q. You cannot remember in Pine Bluff that you ever did have an accident?

A. I say positively I never did.

Q. In handling the cars across town you just pull those cars don't you?

A. I do one way and shove them the other.

Q. When you shove them the other way—suppose you are going from down about Main Street down to the yards?

A. That is a straight cut.

Q. You push them don't you?

A. Yes, sir.

Q. You go across the crossings don't you?

A. Yes, sir.

Q. Do you run a man ahead of you to watch the crossings?

A. No sir.

Q. You go right across those crossings without any man on them?

A. Have a man on the lead car; we don't flag ahead.

Q. In pulling across all of these streets you are talking about you don't protect them do you?

667 A. We are under control; we can stop.

Q. When you are switching you are under control aren't you, when you are backing cars in there?

A. Yes, sir.

Q. You are always under control when you have got hold of a car?

A. In that industry work usually, yes.

Q. Cars are always under control?

A. Yes, sir.

Q. Now take your track yard down there haven't you got a pocket down there where you can handle these cars and run around these cars and pull them up town and then push them in there?

A. Yes, sir.

Q. Isn't that the safest way to do it?

A. No, sir.

Q. It is safer to kick them?

A. No, sir.

Q. It is safer to drop them?

A. Yes, sir.

Q. Then you tell this court it is safer to drop a car across the crossing than it is to pull it?

A. No, I said it was safer to pull the car up there and drop it across the crossing than to run around and have the cars on both sides of the engine and push them way down.

Q. You say you push them one way anyway and you said there was no trouble when you are pushing them and you have
668 got the cars under control and a man is on the end?

A. Yes.

Q. Suppose you are going up town and you had three cars in front of an engine and three cars behind?

A. Yes, sir.

Q. And you had only a foreman and two helpers?

A. Yes, sir.

Q. You would have one on the front end wouldn't you?

A. Yes, sir.

Q. You would be pushing those cars like you were going back down to the depot?

A. Yes, sir.

Q. Wouldn't you be under control?

A. Yes.

Q. Wouldn't it be safe?

A. Certainly.

Q. What danger would there be in it then?

A. There would be no danger in the end forward, but the one ahead of you where you only had one man to protect it be considerable danger. Let me explain to you; you don't understand my situation. If you will allow me to explain to you—when you get up town with this string of cars you have several different places to put them; maybe these cars we have behind us we cannot get
669 rid of until we get rid of the cars ahead of us; consequently you have double hazard having the cars in both ends of your engine.

Q. Suppose though you had cars you say you had to drop off, suppose you put them on the end of the engine where you could push them in there?

A. It couldn't be done.

Q. What is the reason you couldn't push them in there until you disposed of the others?

A. If they are on the rear end from these cars ahead of you you have got to dispose of them before you can get in there.

Q. Don't all of those spur tracks come up to a lead?

A. Yes, sir.

Q. What is the reason you don't—

A. The first man coming the first man served.

Q. What law requires you to do it?

A. The routine of work.

Q. That is all?

A. No, it is practical.

Q. Then if it is practical to do a thing in a dangerous way you do it that way do you?

A. No, sir.

Q. All of your work done down there is done with absolute safety isn't it?

A. As much as possible.

Q. And it was before you had the third man wasn't it?

A. As much as possible.

Q. What do you do with that third man down there when you are spotting the cars?

670 A. Assist in spotting them.

Q. What does he do?

A. Give signals, watch crossings.

Q. Suppose you have got fifteen cars and are spotting them, what does each man do, and there is no crossing there?

A. There is no place up town you can get that many cars together without a crossing.

Q. Then if you are spotting the cars how do the men work?

A. That is owing to what piece of work they are performing.

Q. Suppose you are spotting cars up there on the house track?

A. Well on the house track you take as a usual thing the cars we have to tracks up there, the rear man rides the hind end and steps to the platform; and the man following the engine and the *the* third field man goes out over Main Street and shoves back the spots, the foreman gets what orders are supposed to be given to him pertaining to his work while they go to Main Street and come back.

Q. Do you leave that engine and leave them to go and spot these cars without you?

A. When occasion demands, yes.

Q. Then the fact of the business is the three helpers do the work?

A. No sir, only just a few minutes at a time.

671 Q. If you aren't there you aren't helping?

A. Certainly when I am absent there is only three there.

Q. If these three men when you are absent can handle cars across the crossing with safety—

A. No, the occasion don't demand that; they are generally over the crossing when I leave them.

Q. And you go back to them before they get to another crossing?

A. Yes, sir.

Q. When you are spotting cars do you need this third man?

A. Yes, need him on all occasions for safety and for the efficiency of the work.

Q. Suppose you start up the track from the yard over to town pulling a string of cars, what does he do?

A. Like all the balance sits down until we stop and gets ready to go to work. That is the duties of the switchmen to sit down while the engine is at work.

Q. When you are pushing them back what do you do?

A. It is owing to the circumstances.

Q. Suppose you are pushing a cut of cars from Main Street down to the yards, what do all of you do then?

A. Well, practically the same thing.

Q. Sit down?

A. Sit down and keep from running over any vehicles or people or anything. They can be on the lookout to transfer signals from one place to the other, but that piece of track is practically straight and it don't require any great amount of men.

672 Q. What are the maximum number of cars you handle back and forth in these across town runs?

A. On the City runs you mean?

Q. Yes?

A. Really I couldn't tell you. I suppose about forty cars a day or fifty.

Q. How many trips?

A. Three in the forenoon and three in the afternoon.

Q. You handle forty or fifty cars all together in three trips, three in the morning and three in the afternoon?

A. Yes, sir.

Q. Do you pull them or drop them?

A. Both ways.

Q. Pull them up?

A. Pull them going to town and shove them coming to the yards.

Q. Do you place them any?

A. Yes, sir.

Q. Where do you place them?

A. Different industries.

Q. I am talking about going back and forth to town?

A. Do you mean the men?

Q. Yes?

A. The rear man and foreman is on the rear car; the man on the car is next to the engine; the third field man is anywhere from the rear car to the second car to the engine.

673 Q. Four cars you have four men?

A. Correct.

Q. Now you said there are two curves there and one is a reverse curve; is that correct?

A. That is correct.

Q. Where is the first curve?

A. The first curve is on this branch track leading from the main track up to this Marko Mill.

Q. Where is the reverse curve?

A. What we call the Hawkeye track.

Q. Where is that?

A. That leads out of the passenger track at the I. M. & S. crossing at Fourth Avenue and Third and goes down Sixth Avenue.

Q. And the other curve is the elevator track?

A. Yes, sir.

Q. Have you any public crossing in the Hawkeye track?

A. Yes, sir.

Q. Whereabouts?

A. I forget the name of the streets. I believe there is two or three streets.

Q. Where the curve is?

A. No, straight track where the streets are.

Q. Is there any crossing where this Hawkeye track curves?

A. No sir; it curves out of the passenger track off of Third Avenue and bends and goes into Sixth.

Q. Then the curve is not on the crossing?

674 A. No sir, but the curve is obstructed by a big building. There is a big building right in this curve, obstructs the view of the track down Sixth Avenue.

Q. Now you say it is safer to drop those cars in there than it is to push them in?

A. I consider it so; that is in the yard. You spoke of going behind them in the pocket. It is safer to shove a car than it is to run around them and switch over these crossings with cars on both ends of your engine.

Witness excused.

Recess of Court until in the morning at 8:30 o'clock.

675 The court met pursuant to adjournment, Wednesday morning, April 8, 1914. Whereupon, the following proceedings were had:

Testimony of R. D. Carter.

R. D. CARTER, of lawful age, being duly sworn and examined as a witness on the part of the State, testified as follows:

Direct examination.

By Mr. Jones:

Q. State your name?

A. R. D. Carter.

Q. Where do you live, Mr. Carter?

A. Little Rock.

Q. What is your business?

A. Switchman.

Q. In whose employ are you now?

A. St. Louis, Iron Mountain & Southern Railway Company.

Q. How long have you been working for them at Little Rock?

A. Nine years and three months.

Q. You have been working for the Iron Mountain at Little Rock for how long?

A. Nine years and three months.

Q. Do your duties as switchman require you to switch cars over public crossings?

A. Yes, sir.

Q. Do you ever do such a thing as to drop a car over a public crossing?

A. Yes, sir.

676 Q. Do you ever do such a thing as to kick a car over a public crossing?

A. Yes, sir.

Q. In your opinion as an expert switchman, does it require as many men as a foreman and three helpers to perform your work with safety to the public at public crossings?

A. Yes, sir.

Q. Now when you are dropping a car, when you have a foreman and three helpers, what arrangement is made as to the safety at the crossing?

A. We place one man on the crossing before we make a drop of the car.

Q. Did you do that before you had the third man?

A. No, sir, we did not have a man to put there then.

Q. What arrangement do you make when you want to kick a car?

A. One man is placed on the crossing.

Q. Did you do that before you had the third man?

A. No, sir.

Q. Mr. Carter, I want to ask you: Have you ever, in the last three months or six months, made a request of any official, or Mr. Brown, to put down what is known as a cross-over track near Rock Street in East Little Rock yards, to keep from dropping cars there at the crossing?

Mr. Kinsworthy: I object to that.

The Court: Who is Mr. Brown?

A. Assistant yard master.

677 By the Court:

Q. Were the instructions written or oral?

A. Oral.

Q. Who was present?

A. I don't know that there was anyone but myself.

Mr. Kinsworthy: Mr. Brown wouldn't be the one to put in the crossing, anyway.

Mr. Jones: He is the assistant yard master and is the one from whom this man receives orders, and he carries them out, and the one to whom he would report.

The Court: The objection will be overruled; exceptions saved.

Mr. Kinsworthy: I save my objections.

A. Yes, I asked Mr. Brown to see if he couldn't put a cross-over switch there to save us from dropping cars over the crossing there.

Q. Did he comply with your request?

A. No, sir; he said it would take a considerable expense; said they would have to raise the main line on a level with the house lead.

Mr. Kinsworthy: I object to those last questions and answers, and save my objections.

Cross-examination.

By Mr. Kinsworthy:

Q. Rock Street crossing was the only place you felt necessary to have this cross-over track?

A. That was in my territory where I was switching at that time.

Q. Have you that particular track?

678 A. Yes, sir, we have Rock Street and East Little Rock in general.

Q. So when you have an engine sent out you have that particular territory—had that work?

A. We do switching in East Little Rock and Argenta.

Q. What places in the territory you switch in where there are no cross-over tracks?

A. The Weil Packing Company and the Little Rock Cotton Oil Company—

Q. These are in the City of Little Rock, are they not?

A. Yes, sir.

Q. Rock street is the only place you felt like was a place where you needed a cross-over?

A. That is the particular one I had in mind.

Q. How many cross-overs on that side of the river?

A. Why, there's a cross-over at Rock Street from the main line to the house lead—

Q. Well, go on and give me the number of cross-overs.

A. And there's a cross-over in the East Little Rock yards, from the main line to the freight house lead;

Q. All right.

A. I suppose that is all.

Q. Isn't there one down below Ninth Street?

A. I believe there is one down below Ninth Street.

Q. Is there one anywhere else?

A. No, sir, not that I know of.

Q. I believe it has been stated here that it is against the rules to drop cars over crossings?

A. Yes, sir.

679 Q. And it is against the rules to kick cars over crossings?

A. Yes, sir.

Q. What does that amount to—Why is it necessary to have that rule when you have plenty of men you say to protect it?

A. To have a man, you say?—

- Q. I say why is it necessary to have that rule now?
A. You mean to protect the crossings?
Q. You know it to be against the rule to drop cars over a crossing, when you have plenty of men to protect it?
A. I don't think the rule has ever been changed in the book.
Q. Why is it not necessary?
A. I don't understand you yet.
Q. Is there any danger in doing the work?
A. Dropping a car?
Q. Yes.
A. Yes sir, unless the crossing is properly protected.
Q. Where do you drop cars, at what points?
A. Drop cars on the Little Rock side.
Q. Name one place in your territory where you drop cars?
A. In East Little Rock yards.
Q. Where is that?
A. Sixth street in the East Little Rock yards, what we call the farm.
Q. Sixth Street? Is that down in the old yards?
A. Yes, sir.
Q. Is that what you call the old yards?
A. They are two years old now.
680 Q. Is there any crossing there?
A. Yes, sir, at Sixth Street.
Q. How far is the crossing from Sixth Street?
A. Well, it is fifty yards below the crossing.
Q. It is up-hill isn't it?
A. No sir, it is upon a hill.
Q. It is east towards the yard?
A. Yes, sir.
Q. Then if you dropped a car there you would be dropping it up-hill?
A. Not there, not very much.
Q. Well, answer the question.
A. You'd drop it up-hill on a little per cent.
Q. When you drop cars then you are dropping them up-hill?
A. You drop cars coming out of there.
Q. Tell me the last time you dropped a car there?
A. We dropped a car of stock off the Rock Island transfer.
Q. Don't you know it is against the rule to drop stock?
A. Yes, sir.
Q. Yet you did that at that time?
A. The yard master threw the switch and gave the signal.
Q. What other car have you dropped?
A. That is the only one that I can remember now, in quite a while.
Q. That is the only one you can remember in six months?
A. I can't just recall any right now.
Q. Can't you remember any other at all?
A. I don't remember.
681 Q. Now, talking about Rock Street; that is the only place you drop cars?

A. In Rock Street territory we drop cars, that is one place where we drop cars.

Q. You have a watchman day and night there, don't you?

A. Yes, sir.

Q. You have a watchman at that crossing whether you have a switchman there or not, wouldn't you?

A. Yes, sir.

Q. Now, Mr. Carter, suppose you had a string of five cars, or six cars behind your engine and you wanted to drop the last car on that string; could you do that?

A. No, sir.

Q. Why?

A. It would be a dangerous proposition.

Q. I'm not talking about the dangers; I asked you if you could do that?

A. I've never seen it done.

Q. You never have?

A. I don't believe I have.

Q. You've never seen a car dropped that wasn't next to the engine?

A. No, sir.

Q. That was not the next car behind the engine?

A. No, sir.

Q. Suppose you had four cars and wanted to drop the last car; couldn't you cut it away from the other cars and let it go in the switch?

682 A. I don't believe I ever saw it done.

Q. You never saw that done in your experience as a switchman, and you never did do it?

A. No, sir.

Q. Then you never dropped very many cars?

A. I've dropped a good man.

Q. But not with that operation?

A. No, sir.

Q. You never saw a car dropped that wasn't next to an engine?

A. No, sir.

Q. Did you ever kick a car, standing on the side of one car, and cut it off?

A. Yes, sir.

Q. When kicking cars you have a long string of cars next to the engine?

A. Yes, sir.

Q. Did you ever see them kick a car on the tail-end of the string—away from the engine?

A. Yes, sir.

Q. You've saw them kick cars on the end of a string of cars—kick cars, running along, and cut them off, and kick them, haven't you?

A. Yes, sir.

Q. Don't they cut them off standing on the car sometimes?

A. The man following the engine does that.

Q. It don't make any difference who does that, but they

683 get them off by the lever, don't they, standing on the side of the car and cut them off?

A. Yes, sir.

Q. In kicking a car, you've got to stand on the car and cut it off?

A. Yes, the man following the engine.

Q. Or whoever rides that car off?

A. Yes, sir.

Q. What is the reason you can't do that when you are dropping a car?

A. I just explained, Judge, I never have seen that done.

Q. I wasn't asking you if you had ever seen it done; I asked you what is the reason that they cannot do that.

A. I have not done it, I don't know what they can do.

Q. You have not done that?

A. No, I never have seen it done.

Q. Is there any more danger in dropping a car than in kicking a car off, standing on the car and cutting it off?

A. It is more dangerous to drop a car.

Q. Why?

A. Because you would be hanging on the side of the car.

Q. Well, why should it be more dangerous?

A. You're liable to be knocked off—maybe you'd be knocked off.

Q. Well, maybe you'd be knocked off in kicking it, wouldn't you?

A. No.

684 Q. It is the same proposition, isn't it?

A. No, sir.

Q. Do you remember a fellow by the name of Brown that was hurt at Malvern, a brakeman that lived at Russellville?

A. No, sir.

Q. You don't remember that case?

A. No, sir.

Q. Don't you remember he was going to make a drop switch, going to cut the cars off and was standing on the engine—on the foot board of the engine, and was hurt?

A. No, sir.

Q. You remember that he started to drop a car and claimed that the engine crew threw him off on the ground and the engine run over him?

A. I don't remember that.

Q. That could happen, could it not?

A. I don't remember the circumstances?

Q. Suppose you don't remember, but suppose you are going to make a drop of a car, and put a man on the footboard of an engine to cut the car off?

A. Yes, sir.

Q. And when he cuts the car off—whenever he cuts the car loose from the engine the engine will run away from it, won't it?

A. Yes, sir.

685 Q. Suppose his foot was to slip and he'd fall off, he would fall on the track, wouldn't he?

A. If he was on the footboard.

Q. Yes; he would fall off on the track and the car would run over him.

Q. Well, if he was on the side of the car it couldn't run over him, could it?

A. Not if he fell off from the car.

Q. Not if he was on the side?

A. Not in that case.

Q. Now, Mr. Carter, aren't these cars equipped with ladders at both ends and the sides?

A. Not all of them.

Q. Isn't there a ladder on the side of the car?

A. No, sir, the ladder is on the end sometimes; some of them are on the end and some of them are on the side.

Q. All of them have a stirrup to stand in on the end, haven't they?

A. Yes, sir.

Q. And two or three handholds?

A. One handhold.

Q. You can stand in the stirrup and pull the lever, can't you?

A. Stand at the end?

Q. Every one has a ladder on the same side the lever is, haven't they?

A. No, sir.

Q. You tell me that every car hasn't got a ladder on the end where the lever is?

A. Every one hasn't got the side ladder.

Q. Either the side ladder or the end ladder?

A. Yes, sir, some of them are at the side and some at the end.

Q. Every car has a ladder on it, on the side or on end, end-side?

A. Either one or the other.

Q. Right where the lever is?

A. Yes, sir.

Q. And right where the stirrup is?

A. Yes.

Q. He can stand in that stirrup and pull that lever, can't he?

A. Not without a dangerous operation.

Q. Isn't there always a handhold right on the side of this car, regardless of where the lever is?

A. Yes, there's a handhold on that end of the car.

Q. Right where the lever is, on the side.

A. On the side the lever is on?

Q. Yes?

A. Yes, sir.

Q. Isn't it put there for the brakeman or switchman to stand on?

A. To stand upon or climb upon the car, yes.

Q. And for the purpose of going in between the cars, or if they go on the end of the car?

A. To go on top of the cars.

Q. If it is put there for him to stand on, what is the reason he can't stand on it?

A. He could stand on it, yes, sir.

Q. What is the lever put there for?

A. To uncouple cars.

Q. To keep from going in between?

A. Sometimes, if it is out of operation.

Q. You are not authorized to uncouple cars out of operation, are you?

A. No, sir.

Q. You don't have to do that, do you?

A. No, sir, we are not required to do it.

Q. The cars you handle are in good condition?

A. Yes, sir.

Q. Can't you stand there and pull the lever and cut the engine loose?

A. Judge, I told you that it would be a dangerous operation to drop a car that way.

Q. Well, it would be a dangerous operation to stand on the footboard and drop a car, wouldn't it?

A. All railroading is dangerous.

Q. Not any more dangerous standing on the car than it would be to stand on the footboard of an engine?

A. It is lots more dangerous.

Q. Tell me why?

A. You've got a footing on the footboard; the switchman will have a footing there.

688 Q. Well, hasn't he got a footing and a handhold when he is hanging on the side of the car?

A. No, sir, he's only—he's got a footing and he's only holding on by one hand that-a-way when he's dropping a car.

Q. Well, he is not holding on with but one hand when he's on the engine?

A. Yes, but he's got a better way.

Q. What makes it better? One he's got a foot board to stand on and the other he's got a stirrup to stand in?

A. Well, he'd be bent over.

Q. Well, he would be bent over if he was on the foot board, wouldn't he, when he pulled the pin out?

A. Yes, but he would be lower on the car.

Q. Wouldn't you have to reach over if you were standing on the foot board?

A. Yes, a little.

Q. Well, suppose your foot would slip when you were riding on the foot board; where would you go?

A. You would go on the track.

Q. Suppose you were standing on the car and your foot should slip, where would you go?

A. You would go either on the side—but nine times out of ten you'd go on the track?

Q. Like if a fellow was hanging on the side of a car—like this table here: if he would fall down would he go clear under this table, or if he was on the footboard and fell off wouldn't he go clear

under on the track here, this way, under this table right on the track (indicating).

Mr. Jones: Don't argue with the witness.

The Court: Yes, just ask questions.

By Mr. Kinsworthy:

Q. When you are reaching down standing on the car you would reach down and pull the lever, and whenever you pulled the lever you would straighten up and be in an upright position—straighten up, wouldn't you, like that.

A. No, sir, the ladders wouldn't have that much slope.

Q. Well, whenever you pull the pin you can stand straight up then, can't you, go on up the car?

A. If you were standing on the side of the car you couldn't hold the lever up until the cars parted.

Q. Well, all you would have to do is to pull the lever up, and after the cars started apart then you could stand straight?

A. Yes, you could stand up straight or go on top of the car, whichever the case required, after the cars parted, but you've got to hold that lever up so the cars can part.

Q. Well, you could hold that lever up with your other foot, couldn't you?

A. Judge, that isn't the practice among railroad men, to cut off cars with their feet.

The Court: Don't ask absurd questions.

Mr. Jones: You never heard of a man cutting off a car with his foot, did you?

690 Mr. Kinsworthy: No, not at all; I didn't ask him that.

The Court: Go ahead and ask your question.

By Mr. Kinsworthy:

Q. They don't cut them off with their feet, but they raise the lever up with one hand, and if he wants to he can hold the lever up with his foot—

The Court: Are you testifying, or are you asking him to testify?

Mr. Kinsworthy: No, sir; I'm not testifying; I'm just asking him.

Mr. Jones: We are going to object to that.

Mr. Kinsworthy: Well, you can strike that out about the foot, then.

The Court: Just ask questions and don't argue with the witness.

By Mr. Kinsworthy:

Q. How often do you drop cars—referring to Rock Street; that is about the only place you drop cars over crossings?

A. We drop cars all day at Rock Street.

Q. All day. And you have a night watchman and a day watchman there?

A. Yes, sir.

Q. That is about the only place that you drop cars?

A. That is about the only place in the yards that we drop cars.

Q. In that whole territory, about what per cent of cars that you handle do you drop?

A. We drop about forty per cent of all the cars in that territory.

Q. At Rock Street?

A. Yes, sir.

Q. What per cent of your switching that you do do you do at Rock Street?

A. We do about 85 or 90 per cent.

Q. At Rock Street?

A. Yes, sir.

Q. Do you do switching in East Little Rock, down by the Compress?

A. No, sir, we take a cut of cars out there and shove the cars back.

Q. Do you do switching at the freight depot?

A. Yes, sir.

Q. Do you handle more cars at Rock Street than you do at the freight depot?

A. About twenty-five or thirty per cent of the cars that we handle at Rock Street go to the freight depot.

Q. Do you drop cars at Plunkett-Jarrell Grocer Company's spur track?

A. No, sir, that is up hill; we couldn't drop them there.

Q. That is up hill you say?

A. Yes, sir; that track holds about ten cars.

Q. From the Rock Island station up this way—up this way now (indicating) how far do you come up from the Rock Island station, up this way (indicating)—we will say this way on the main line (indicating on the map)?

692 A. Plunkett-Jarrell track leads off the house lead.

Q. Well, come back up this way; about how far is the grade up this way (indicating)?

A. A grade is right at Plunkett-Jarrell's switch, right behind this house here (indicating); here is the Brewery track, the Brewery track runs right up that way (indicating).

Q. Then you don't drop anything up that way—up hill to Rock Street?

A. The cars that are brought over here have been dropped at Rock Street; then we bring them on out to the other places here.

Q. You drop over this lead?

A. We drop over there onto the house lead.

Q. You drop them at Rock Street where these two switchmen are onto the house lead; then you take and distribute them to the various industries?

A. Yes, sir, push them in to the various industries.

Q. Then the only dropping you do is on this lead for these industries?

A. Yes, sir, we drop them at Rock Street for these industries.

Q. All the dropping you do there for these industries is on that lead?

A. Yes, sir.

Q. The other cars you handle there over that crossing, they are pushed over that crossing, are they not?

693 A. Yes, sir, we push those cars up the alley track—what is known as alley proper—line them up first, then push them up the alley track.

Q. Now Mr. Carter, in pushing cars into the industries that way, do you need the third man?

A. Yes, sir, we need the third man.

Q. What do you do with him?

A. He would be on top or be down at the side of the track.

Q. Suppose you had four cars and were pushing them up this lead, up the industry tracks, how do you distribute them in?

A. Well, the man following the engine would be on the footboard, and very often they have an obstruction probably and this man couldn't see the signals; and the foreman he would be on the side of the car and he would make the spots at the houses; and the long field man or the short field man would be on top to set the brakes; and the short field man, if the long field man was on top, he would cut the car off, that is, if the obstruction I spoke of was there and the man following the engine couldn't do that.

Q. What obstruction do you mean?—an obstruction where you would go into a switch track and the man couldn't see the engine?

A. Yes, sir.

Q. Take four men on an engine—four men with an engine and four cars; does it take that many to handle it safely?

694 A. Yes, sir.

Q. Four men on four cars to handle it safely?

A. Yes, sir.

Q. You have done that with one man, haven't you?

A. I don't believe I have.

Q. You've done that many a time haven't you?

A. No, sir, I don't believe I have.

Q. You don't have to cut the cars off at all when you get them in the industry tracks?

A. Sometimes we don't have to cut them off at all.

Q. You push the cars up in the industry tracks, and after you get them up in there you cut them off?

A. If the required space in there—if we have to get them in the required space, we cut them off.

Q. And it requires four men to four cars to handle these cars safely?

A. Yes, sir, on a curve.

Q. What did you do when you only had two men?

A. We did the best we could.

Q. You did the work all right didn't you?

A. I don't know.

Q. Where did you place these men when you had two helpers in doing that work?

A. We would place a man on top of the car to set the brake, and the foreman he would spot the car.

Q. And who would be the one to cut them off?

695 A. The foreman he may cut them off sometimes, and the man following the engine he may cut them off and set the brakes too.

Q. Then if you had a foreman you don't need the other man on top; you don't need a foreman and one man on top of a car, do you?

A. I couldn't say; you could do that.

Q. You wouldn't say you couldn't, would you?

A. I don't know Judge.

A. Well, all we want is the facts; we don't want anything else.

A. Yes, the truth won't hurt anybody.

Q. Now don't you know that you've handled those cars with a foreman and one man lots of times.

A. No, sir.

Q. And don't you know that two men has put them in there?

A. No, sir.

Q. Don't you know that you do that now?

A. I've never seen it done.

Q. Don't you know that two men do the work most the time when the other man is doing something else?

A. The rule is that the men will be at the engine.

Q. Don't you know that you do it often times with one or two men, and the other fellow is looking after something else?

A. I couldn't remember what the other fellow would be doing; I don't remember that.

Q. You can't remember an occasion of that kind?

696 A. I don't remember.

Q. Don't you know it could have been done?

A. It may be, I couldn't tell.

Q. Don't you know?

A. I guess so.

Q. How long have you been a switchman with a foreman and two helpers?

A. About four years.

Q. Did you ever switch with a foreman and one helper?

A. No, sir, I did not.

Q. You switched with a foreman and two helpers for four years?

A. About that.

Q. Now you say you need this third helper?

A. Yes, sir.

Q. For the protection of public crossings?

A. Yes, and the safety to employees.

Q. What public crossings do you protect with the third man?

A. We have eleven from the Rock Island crossing to the Union depot.

Q. Do you send the man ahead every time you go across a crossing?

A. If we do any switching at that point we always do.

Q. He just stands on the crossing?

A. Unless he is engaged in riding a car; we use the next man—

Q. I want to ask you if every time you switch over a crossing you have a man standing on the crossing?

A. Every time.

Q. You swear that you have one of these men standing on the crossing?

A. The one that is not engaged in riding the car, he stands at the crossing?

Q. Under what circumstances do you have a man to stand at the crossing?

A. Under all circumstances.

Q. That is when you are switching across a crossing you have a man standing on the crossing?

A. We do at Rock Street all the time.

Q. Well, I am talking about the other crossings that you refer to in Little Rock?

A. No, sir, not every crossing; we don't have him standing on the crossing all the time; we only have him standing there when we are switching.

Q. Isn't it a fact that at Rock Street is the only street that you put a man on the crossing, and you only put him on that street when you are going to switch over that?

A. Well, we have one at Spring; we have a crossing there; we have a good many tracks there.

Q. How many switches do you make at Spring Street?

A. Two sometimes.

Q. That and Rock Street are the only places you put a man on the crossing?

A. Well, the house lead, when we come around towards
698 Collins—

Q. Rock Street?

A. No, sir, the house lead.

Q. The house? Where is that?

A. The Collins Street freight house.

Q. That is not a crossing is it?

A. Yes, there's two street crossings there; Collins Street and Martin.

Q. Just one switch there?

A. We switch there every day.

Q. You don't switch there in the daytime; you pull those cars out at night, don't you?

A. We pull the cars out at night, but we have eleven or twelve industries that we work there; the work is very heavy.

Q. You don't drop cars there?

A. We drop all the cars for these eleven or twelve industries. We have about twenty-eight or thirty merchandise cars a day there.

Q. At Collins?

A. No, we don't drop them there; we drop those at Rock Street.

Q. You don't drop any cars at Collins Street?

A. No, but we switch cars out to the private industries there.

Q. The only cars you drop over there you drop at Rock Street?

A. For the industries you mean?

699 Q. You don't drop cars at Collins Street?

A. We drop cars for Collins Street at Rock Street.

Q. Answer the question. I say you don't drop any cars at Collins?

A. No, sir, we don't drop any cars at Collins.

Q. You drop those cars at Rock Street and push them over the track at Collins—I mean over the crossings at Collins Street?

A. Yes, sir.

Q. Then in the yards across the river on the Little Rock side the only place you drop cars, as I understand, is at Rock Street?

A. For that territory, yes, sir.

Q. And there you have a watchman day and night?

A. Yes, sir, we have one at Rock Street day and night.

Redirect examination.

By Mr. Jones:

Q. Mr. Carter, Mr. Kinsworthy asked you about a flagman at Rock Street; I wish you would tell the court, if you know, how many different sets of tracks you have at Rock Street,—if you know?

A. There is——

Mr. Kinsworthy: Your Honor, the blue prints will show that better.

A. (Continuing:) nine tracks that crosses Rock Street proper.

Q. How many other tracks?

A. Four tracks—levee tracks that crosses Commerce street.

700 Q. Now, Mr. Kinsworthy asked you about a man falling off of a foot board of an engine; did you ever in your experience hear of a man falling off the foot board of an engine?

A. I don't believe so; I believe I've heard of them falling under the footboard trying to get on.

Q. Do you remember the accident to Roy Griswald that had his arm cut off, where he was hanging on the side of a car and making a switch?

A. Yes, I believe I do.

Q. Now Mr. Kinsworthy asked you about pushing four cars up the industry track; did you ever push any more than that up there?

A. Quite often, yes, sir.

Q. Do the duties of the foreman, Mr. Carter, require him to talk with the managers of the different industry houses where you spot cars?

A. Quite often, yes, sir.

Q. I believe you stated in answer to one of Mr. Kinsworthy's questions that you use three men and a foreman even before the new law went into effect?

A. Before what?

Q. Before they used the third man and a foreman?

A. Yes, sir, we have used three men and a foreman before the law went into effect?

Q. Were they later pulled off; that is, was this man later pulled off, the third man?

A. Yes, sir, he was later pulled off.

701 Q. And then did you have a foreman and three men with the engine you worked on?

A. We had the engine foreman and two men then.

Q. Now you have worked both with a foreman and three helpers and a foreman and two helpers, did you state?

A. Yes, sir.

Q. Now in your opinion is this third man necessary?

A. Yes, sir.

The Court: Hasn't he been over that?

Mr. Kinsworthy: Yes, sir.

By Mr. Jones:

Q. Mr. Kinsworthy asked you about placing a man on the crossing when you are switching there; now do you have a man there when you are doing switching—any considerable amount of switching, always?

A. We always have a man where we are switching over dangerous crossings.

Q. Do you have a man at the crossing when you are doing switching there?

A. Not in all cases, not exactly at all crossings.

Q. You place a man on the crossing where it is necessary on account of the track?

A. Yes, sir.

Q. Now Mr. Kinsworthy asked you about Collins Street: what is the condition of the track at Collins Street with reference to curves and blind crossings?

A. There is a sharp curve on the house track at Collins Street, which obstructs the view and obstructs the view into Scott-Meyer industry track which holds ten cars there.

702

By Mr. Kinsworthy:

Q. Collins Street I thought- you said was the one that you pushed the cars over there?

The Court: Just stand aside; you needn't answer those questions; that is enough for this witness.

Mr. Kinsworthy: The defendant wishes to further examine the witness as to the accident where he said Roy Griswald was injured in doing switching.

But the Court refused to permit the defendant to further examine the witness.

The Court: I will exclude all that testimony about Roy Griswald.

Mr. Kinsworthy: Just strike that testimony out in regard to Roy Griswald then.

Witness excused.

703

Testimony of J. E. Phillips.

J. E. PHILLIPS, of lawful age, being duly sworn and examined as a witness on the part of plaintiff, testified as follows:

Direct examination.

By Mr. Jones:

Q. What is your name?

A. J. E. Phillips.

Q. Where do you live, Mr. Phillips?

A. Little Rock?

Q. What is your business?

A. Switchman.

Q. How long have you been a switchman?

A. Nine years and six months.

Q. In whose employ are you now engaged?

A. St. Louis, Iron Mountain & Southern Railway Company.

Q. Where?

A. Little Rock and Argenta.

Q. How long have you been switching over there at Argenta?

A. Nine years and six months.

Q. In ordinary, every-day switching Mr. Phillips do you ever do such a thing as to frop a car over a public crossing?

A. We do.

Q. Did you ever do such a thing as to kick a car over a public crossing?

A. We do.

Q. Do you ever do such a thing as to push cars across public crossings?

704 A. Yes, sir.

Q. From your experience in ordinary and every-day switching, where you do that, does that require you to do these things?

A. Yes, sir.

Q. In your opinion, Mr. Phillips, as an expert switchman, is it necessary to have a foreman and three helpers to perform the different switching operations at the crossings with safety to the public on the crossings?

A. To have a foreman and three helpers?

Q. Yes.

A. Yes, sir, in my opinion it is.

Q. Can you do that and protect the safety of the public at public crossings with any less men?

A. How is that?

Q. Can you protect the safety of the public at public crossings with any less men than a foreman and three helpers?

A. No, sir.

Q. Did you ever make a request of yard master Brown or Road Master Strole to put in a cross-over track at Rock Street in Little

Rock so as to make it unnecessary to perform, or to drop cars across the public crossing?

Mr. Kinsworthy: I object to that, and save my exceptions.

A. I didn't exactly made a request; I just mentioned it to them; told them it would be a good idea and would save dropping
705 so many cars there.

Q. What answer did they give you?

A. The Road Master said it was not on a level with Rock Street.

Q. Said what?

Mr. Kinsworthy: I object to all that and save my exceptions.

By Mr. Jones:

Q. Said what now?

A. Said the main line was not on a level with the house lead and the main line would have to be raised in order to get off the switch in Rock Street, for it to be done.

Q. Did they ever put it in?

A. No, sir.

Mr. Kinsworthy: I save my exceptions to this testimony.

Cross-examination.

By Mr. Kinsworthy:

Q. Mr. Phillips, whereabouts in the yards do you work in Little Rock?

A. At the present time?

Q. Yes.

A. I am in the Argenta yards at the present time.

Q. Have you ever worked in both yards?

A. I have.

Q. Your switching is confined to Little Rock yards entirely?

A. No, not to Little Rock, no, sir.

Q. Argenta and Little Rock?

A. Little Rock and Argenta, yes, sir.

706 Q. That is what I mean?

A. Yes, sir.

Q. Did you ever hurt any one in dropping cars across Rock Street?

A. Not in my recollection.

Q. How long have you been doing it?

A. I've been dropping cars, why ever since I've been switching for the Mountain.

Q. How long have you been with the Iron Mountain?

A. Nine years and six months and a few days.

Q. How many points in Little Rock and Argenta where you generally drop cars?

A. How many points?

Q. Yes, across crossings?

A. Across Public crossings?

Q. Yes.

A. Well, I don't know the number; eight or ten.

Q. Now just tell us what crossings you drop cars across in Argenta and Little Rock?

A. Rock Street, Commerce Street, Scott Street:

Q. How far is Commerce Street from Rock Street?

A. One block.—Scott Street, Sixth Street, in East Little Rock, Ninth Street in East Little Rock, and also a little crossing that goes down by Fones' Hardware to the Boathouse; very often people cross back and forth there, up until late hours at night, going to the Little Rock Athletic Association. That would be a crossing for pedestrians; it wouldn't be any crossing to drive across there—

707 Q. Don't you know in going down to the Boat House that there is a walk going over the track?

A. No, sir.

Q. You say there is no walk that goes over that track, no elevated walk?

A. No, sir.

Q. There is no drive way there is there?

A. No, sir, no driveway.

Q. When did you ever drop a car there?

A. On several occasions.

Q. Name the last time.

A. I couldn't call it right to the date.

Q. You can't remember when you did?

A. Yes, sir, I can remember times of dropping but I can't recollect the exact hour or day; I never made any record of it.

Q. Did you ever drop any cars there in the last month?

A. No, sir, I don't believe I have done so. I've been off of the job almost a month—I have not been on the job for twenty or thirty days.

Q. Have you dropped one there in the last six months?

A. Yes, sir.

Q. How often have you dropped a car across Scott Street?

A. On several occasions.

Q. How often?

A. Oh, probably we'd drop cars there once or twice a day.

Q. Can't you push cars in there.

A. We might do it; if we had the car on the right end of the engine we could push it in.

708 Q. Couldn't you push cars in over Ninth Street?

A. It depends on where the cars are, whether you could push them in or not.

Q. Ninth Street is away down at the Southern Cotton Oil Mill, isn't it?

A. Yes, sir, it is.

Q. How far is the switch from the crossing?

A. The switch, I presume, is three car lengths from the crossing.

Q. It is practically open isn't it?

A. Practically open.

Q. It's not a blind switch—or a blind crossing?

A. No, you couldn't call it a blind crossing.

Q. There's no buildings close to it?

A. Oh, yes.

Q. There's nothing where the switch is?

A. No, there's nothing where the switch is, no sir.

Q. At Commerce Street: what industries do you feed there?

A. At Commerce Street?

Q. Yes.—What industries would you consider that the track goes off from Commerce Street?

A. None right off the street.

Q. You say you drop cars at Commerce Street; how do you drop cars there if there's no track leading off from there?

A. I mean across Commerce, from the main line to the house lead; we drop cars across Commerce from the main line to the house lead there.

709 Q. You don't drop them at Commerce, you drop them at Rock?

A. Yes, sir.

Q. You said you dropped them at Commerce Street. You didn't mean to say that you dropped them at Commerce Street?

A. Dropped them over Commerce Street.

Q. Mr. Phillips, isn't the only place where you drop cars, at Rock Street, to amount to anything?

A. Rock Street and several other places.

Q. I say to amount to anything; I didn't say the only place.

A. No, sir.

Q. Is it against the rule to drop cars across crossings?

A. Yes, unless in a case of necessity.

Q. Is it always a case of necessity when you drop cars?

A. Down there I would say yes.

Q. What makes it?

A. We have no place to run around the cars in that yard.

Q. Isn't there a cross-over down there in that yard?

A. No sir; there's no cross-over, there's what we call a deck there.

We have no track to run around these cars.

Q. There is a cross-over there in the yard?

A. A cross-over?

Q. Yes, where cars can cross from one track to the other.

710 A. Where cars can cross from one track to the other? I say if they do, I say we'll have to run around all these tracks.

Q. The tracks at Rock Street; don't they connect at both ends?

A. Connect at both ends?

Q. They are not stub tracks, all of them.

A. Virtually all of them, yes.

Q. I am not talking about virtually all of them; I am asking you if there were all.

A. I will say ninety per cent are stub tracks.

Q. Then these others are not?

A. Yes, sir.

A. Cuts of that kind, the foreman is supposed to get out so the man following the engine can see him give the signals, and the short field man would cut the car off and the long field man would ride it.

Q. These two men would do the work while the other two men watched them?

A. No, sir, they'd be all four doing the work.

Q. There wouldn't be but two men that touched the car?

A. The other men would be working; you couldn't cut the cars off unless you had some way to pass the signals.

715 Q. How long did you say you'd been working in Little Rock?

A. Nine years and six months and a few days, I believe it was.

Q. Well, now before this law went into effect, how many men did you have with an engine?

A. A long time before the law went into effect we had a foreman and three helpers.

Q. Whereabouts?

A. On all the engines in Little Rock terminal.

Q. In what yards and what time?

A. Up until something like—I don't exactly remember the dates when they cut the third helper off.

Q. Where did that engine work where you had the foreman and three helpers?

A. You say where did they?

Q. Did every one of them work there in Little Rock?

A. Yes, sir.

Q. When?

A. I would say 1904 or 1905, along in there, that the engines had a foreman and three helpers.

Q. Then they took off one of these helpers?

A. Yes, sir; maybe it was longer than that; I don't remember the exact date.

Q. Well, just as near as you can tell Mr. Phillips?

A. All I could do is to give a rough estimate.

Q. Then it was 1905 down to 1913 that you didn't have the third man?

A. I wouldn't say; I don't remember the dates when the
716 helper was taken off.

Q. You say he was taken off in 1904 or 1905?

A. No, sir, I didn't say he was taken off in 1904 or 1905; I say in 1904 or 1905 we had the third man; I don't remember when they pulled the third man off.

Q. They pulled the third man off some four or five years ago?

A. I don't think it has been that long; I don't think it has been over three or four years.

Q. After that time, after three or four years, you only had a foreman and two helpers?

A. We did.

Q. And you did the same work as you are doing now?

A. We did the same work but not as much of it.

Q. Will you testify that engine in Little Rock handles any more cars now than it used to?

By Mr. Jones:

Q. Do you know of your own knowledge?

A. I don't know exactly without looking at the record; I will say it handles several.

By Mr. Kinsworthy:

Q. You never hurt a man in dropping cars did you?

A. How is that?

Q. Did you ever hurt a man in dropping a car at a crossing?

Mr. Jones: I object to that and save my exceptions.

A. Did I ever what?

By Mr. Kinsworthy:

Q. Did you ever hurt a man in dropping a car at a public crossing?

717 A. No, sir. I told you awhile ago I didn't.

Q. You did it all times when you had a foreman and two helpers?—that is dropped cars at public crossings?

A. Yes, sir.

Q. Did you ever hurt a man at a street crossing in kicking a car?

A. Not that I can recall.

Q. You did that with a foreman and two helpers?

A. Yes, sir.

Redirect examination.

By Mr. Jones:

Q. Mr. Phillips, Mr. Kinsworthy asked you about the places where you drop cars, but didn't give you an opportunity to finish your answer. You gave Rock Street, in Little Rock, and Ninth Street and Main Street and Commerce; are there any other places where you drop these cars in Little Rock or Argenta?

A. Yes, sir, we drop cars at Fenes Brothers, very often, over a little pathway or walk there.

Q. Did you ever drop cars across Main Street in Argenta?

A. Yes, sir.

Q. Now, Mr. Phillips, is there any difference in the speed of an engine in kicking cars as an average proposition—when you are dropping a car and when you are kicking it?

A. Why, yes.

Q. Does the speed of the engine and the cars increase the hazard of riding on the side of the car?

718 A. It does a great deal in my opinion.

Q. He asked you if you ever hurt a man at a crossing. Now did you ever see a man get hurt at a crossing?

Mr. Kinsworthy: I object to that.

Mr. Jones: Well, I will withdraw it.

By Mr. Kinsworthy:

Q. Doesn't Main Street in Argenta—Isn't that covered by the bridge there in Argenta.

Mr. Jones: That is not new matter and we object.

The Court: I think you went over that. The witness may stand aside.

Witness excused.

719

Testimony of F. H. Bingham.

F. H. BINGHAM, being first duly sworn, and being called in behalf of the State in rebuttal, testified as follows:

Direct examination.

By Mr. Jones:

Q. What is your name?

A. F. H. Bingham.

Q. Where do you live, Mr. Bingham?

A. Argenta.

Q. What is your business?

A. Switchman.

Q. How long have you been a switchman?

A. Fourteen years.

Q. Where are you engaged?

A. In Argenta for the Iron Mountain.

Q. Did you ever do such a thing as drop a car across public crossings?

A. Yes, sir.

Q. Did you ever do such a thing as kick a car across public crossings?

A. Yes, sir.

Q. Did you ever do such a thing as push cars across public crossings?

A. Yes, sir.

Q. Are those instances, Mr. Bingham, instances that arise in common, every-day switching life?

A. Yes, sir.

Q. In your opinion as an expert switchman is it necessary to have a foreman and three helpers to do this work with safety to the public at the crossings?

720

A. Yes, sir.

Q. Can you do it with any less?

A. No, sir.

Q. Now, Mr. Bingham, there has been some controversy about the rules. Did you ever have Mr. Wachter tell you to shove any cars across a crossing?

A. Yes, sir.

Q. Did you ever have him to tell you to shove as many as forty or fifty cars across a crossing?

A. Yes, sir.

Q. When was the last time you can remember of that he done that?

A. I cannot recall the date or time.

Q. Just approximately?

Mr. Kinsworthy: I object unless he can give the day or time and place.

Q. Have you ever had Mr. Wachter to tell you to shove a cut of forty or fifty cars across a public crossing at 9th Street in Argenta within the last three months?

A. No, sir.

Q. Did you ever within the last six months?

A. No, sir.

Cross-examination.

By Mr. Kinsworthy:

Q. Mr. Bingham, how long have you been switching at Little Rock?

A. About nine years and a half at two different periods.

Q. For the Iron Mountain?

721 A. Yes sir; eight years and two months this last period.

Q. How long have you been there this last time?

A. About eight years and two months.

Q. Prior to the time the law went into effect, this law that we are contesting, what did your switch crew consist of?

A. A foreman and two helpers, an engineer and fireman.

Q. Did you do the same class of switching that you are doing now?

A. Yes, sir.

Q. Did you do the switching all right?

A. We done the best we could.

Q. Well you did it with safety didn't you?

A. As far as possible, yes, sir.

Q. Well did you ever hurt anybody switching cars across crossings?

A. No sir, not that I recall.

Q. During all of that time you don't remember ever hurting a man at a crossing?

A. No, sir.

Witness excused.

722 *Testimony of I. F. Magee.*

I. F. MAGEE, being first duly sworn, and being called in behalf of the State in rebuttal, testified as follows:

Direct examination:

Q. What is your name?

A. I. G. Magee.

A. Cuts of that kind, the foreman is supposed to get out so the man following the engine can see him give the signals, and the short field man would cut the car off and the long field man would ride it.

Q. These two men would do the work while the other two men watched them?

A. No, sir, they'd be all four doing the work.

Q. There wouldn't be but two men that touched the car?

A. The other men would be working; you couldn't cut the cars off unless you had some way to pass the signals.

715 Q. How long did you say you'd been working in Little Rock?

A. Nine years and six months and a few days, I believe it was.

Q. Well, now before this law went into effect, how many men did you have with an engine?

A. A long time before the law went into effect we had a foreman and three helpers.

Q. Whereabouts?

A. On all the engines in Little Rock terminal.

Q. In what yards and where?

A. Up until something like—I don't exactly remember the dates when they cut the third helper off.

Q. Where did that engine work where you had the foreman and three helpers?

A. You say where did they?

Q. Did every one of them work there in Little Rock?

A. Yes, sir.

Q. When?

A. I would say 1904 or 1905, along in there, that the engines had a foreman and three helpers.

Q. Then they took off one of these helpers?

A. Yes, sir; maybe it was longer than that; I don't remember the exact date.

Q. Well, just as near as you can tell Mr. Phillips?

A. All I could do is to give a rough estimate.

Q. Then it was 1905 down to 1913 that you didn't have the third man?

A. I wouldn't say; I don't remember the dates when the
716 helper was taken off.

Q. You say he was taken off in 1904 or 1905?

A. No, sir, I didn't say he was taken off in 1904 or 1905; I say in 1904 or 1905 we had the third man; I don't remember when they pulled the third man off.

Q. They pulled the third man off some four or five years ago?

A. I don't think it has been that long; I don't think it has been over three or four years.

Q. After that time, after three or four years, you only had a foreman and two helpers?

A. We did.

Q. And you did the same work as you are doing now?

A. We did the same work but not as much of it.

Q. Will you testify that engine in Little Rock handles any more cars now than it used to?

By Mr. Jones:

Q. Do you know of your own knowledge?

A. I don't know exactly without looking at the record; I will say it handles several.

By Mr. Kinsworthy:

Q. You never hurt a man in dropping cars did you?

A. How is that?

Q. Did you ever hurt a man in dropping a car at a crossing?

Mr. Jones: I object to that and save my exceptions.

A. Did I ever what?

By Mr. Kinsworthy:

Q. Did you ever hurt a man in dropping a car at a public crossing?

717 A. No, sir, I told you awhile ago I didn't.

Q. You did it all times when you had a foreman and two helpers?—that is dropped cars at public crossings?

A. Yes, sir.

Q. Did you ever hurt a man at a street crossing in kicking a car?

A. Not that I can recall.

Q. You did that with a foreman and two helpers?

A. Yes, sir.

Redirect examination.

By Mr. Jones:

Q. Mr. Phillips, Mr. Kinsworthy asked you about the places where you drop cars, but didn't give you an opportunity to finish your answer. You gave Rock Street, in Little Rock, and Ninth Street and Main Street and Commerce; are there any other places where you drop these cars in Little Rock or Argenta?

A. Yes, sir, we drop cars at Fones Brothers, very often, over a little pathway or walk there.

Q. Did you ever drop cars across Main Street in Argenta?

A. Yes, sir.

Q. Now, Mr. Phillips, is there any difference in the speed of an engine in kicking cars as an average proposition—when you are dropping a car and when you are kicking it?

A. Why, yes.

Q. Does the speed of the engine and the cars increase the hazard of riding on the side of the car?

718 A. It does a great deal in my opinion.

Q. He asked you if you ever hurt a man at a crossing. Now did you ever see a man get hurt at a crossing?

Mr. Kinsworthy: I object to that.

Mr. Jones: Well, I will withdraw it.

Q. Where do you live?

A. Pine Bluff.

Q. What is your business, Mr. Magee?

A. Switching.

Q. How long have you been a switchman?

A. I have been a switchman, that is doing nothing else but switching, for nearly ten years. I have had about fifteen years' experience.

Q. In whose employ are you now engaged?

A. The Cotton Belt Railroad Company.

Q. Do you ever do such a thing in your yards at Pine Bluff as to drop cars across public crossings?

A. Yes, sir.

Q. Do you ever do such a thing as to kick cars across public crossings?

A. Yes, sir.

Q. Do you ever do such a thing as to shove cars across public crossings?

A. Yes, sir.

Q. Are these instances that arise in common, every day switching life?

A. Yes, sir.

723 Q. In your opinion as an expert switchman how many men are required to perform this operation with safety to the public at crossings?

A. I would consider a foreman and three helpers.

Q. Can you do that with any less number?

A. Not with safety.

Q. Mr. Magee, I have a paper here that I wish to show you and ask you if you know what that is? (handing paper to witness).

A. Yes sir, I know what it is intended for.

Q. Did you make it?

A. I did.

Q. What does that represent, Mr. Magee?

A. Why it represents the main line and industrial tracks in the City of Pine Bluff of the Cotton Belt.

Q. Is that a map of the Cotton Belt yards at Pine Bluff?

A. Yes sir, of the industrial tracks and main line up town; that is what it is intended for.

Mr. Kinsworthy: Is that a correct map of it?

A. Why I couldn't swear that it is absolutely correct, no sir.

Mr. Kinsworthy: Then I object to it.

Mr. Jones:

Q. Is that correct as to the public crossings that the lines run over?

A. Well there is that many crossings, yes, sir; as far as them being absolutely correct, I couldn't say.

By the Court:

Q. Well are there any more crossings than those shown?

724 A. I don't think so.

By Mr. Kinsworthy:

Q. Will you swear that every one of those crossings that are there are open?

A. They are practically all there, but they are not all open that is shown on this map.

Q. Then that map isn't absolutely correct is it?

By Mr. Jones:

Q. I will withdraw the map. How many crossings are there in the Cotton Belt yards at Pine Bluff?

A. About thirty.

Q. How many of those crossings are open if you remember?

A. Why to the best of my memory there is about twenty-eight of them that is open.

Q. Now, Mr. Magee, it was testified here yesterday I believe that 7th Street, 8th Street, 9th Street, 10th Street and 11th Street were not open. Now are those crossings included in that number that you mention?

A. No, sir.

Q. Have you any curves in the yards at Pine Bluff?

A. Yes, sir, we have some few slight.

Q. Have you any blind crossings in Pine Bluff?

A. Some, yes, sir.

Q. Where are the different crossings of the Cotton Belt yards, main line and spur tracks with reference to the down town district?

A. I don't quite get you?

725 Q. Are the crossings that you speak of, are they in the down town district of Pine Bluff?

Mr. Kinsworthy: I object.

The Court: Objection sustained to the form of the question.

Mr. Kinsworthy: I object to his answering the question unless it is put in the proper form.

Cross-examination.

By Mr. Kinsworthy:

Q. You say you have been switching at Pine Bluff how long?

A. Nearly six years the last time; about five years and nine months.

Q. Up to the time this law went into effect how many men did you have with an engine?

A. A foreman and two helpers, engineer and fireman.

Q. You did your switching safely didn't you with those?

A. I couldn't say that we ever had any accidents.

Q. Answer my question. Did you do it with safety with a foreman and two helpers?

A. As much as possible.

Q. Well, did you ever have an accident?

A. I don't know that we did on a street crossing.

Q. Well don't you know that you never did on the street crossing when you had only a foreman and two helpers?

A. I just cannot recall any at the time.

Q. How many cuts or cars in a cut do you handle from your yard up town about on an average?

A. About on an average I suppose would be anywhere from one to fifteen or sixteen, something like that.

Q. You say you have two curves there, where are they?

726 A. Why one is on what is known as the elevator track and the other is known as the Hawkeye track, the only curves that particularly amount to anything.

Q. On the Hawkeye track Mr. Holt said there was no crossing where the curve was; is that correct?

A. There is no crossing right on the curve.

Q. That is there in the yards isn't it?

A. No sir, it is what we call the woods.

Q. Then the only curve you have at a crossing is at the elevator track?

A. Yes, sir, on the elevator lead.

Q. Then your track running from the yards up town is a straight track isn't it?

A. Practically so, yes sir.

Q. Runs right up an open street?

A. Yes, sir.

Q. And the track is in the middle of the street isn't it?

A. I couldn't say about that.

Q. Fairly so just from your observation, the best you can tell.

A. Why, yes sir.

Q. Then the buildings are out on the sides of the street back of the sidewalks aren't they?

A. Yes sir, some of them butt up pretty close though.

Q. They cannot come any further than the sidewalk can they? They don't allow them to build up on the sidewalk do they?

A. The sidewalks are built pretty close.

727 Q. You said you had a blind crossing or two there; where is that?

A. Well there is one just off of Main Street on this elevator lead. There is one at Marko Mills; one at what is known as Ash Street I believe, between the old C. L. & T. power house and the Hammet warehouse.

Q. That is all isn't it?

A. That is all I can recall.

Q. Now at Main Street how near is the building to the track?

A. I couldn't say just exactly, but from the rail to the building I should say it is about six feet.

Q. Is that right at the crossing?

A. Right at the sidewalk.

Q. Isn't on the crossing though. I am talking about on the crossing how far is the building from the Street?

A. Well it is the width of the sidewalk from the building to the street. There is no sidewalk on the side of the building next to the track.

Q. Does the side track go up the street or up to the side of the building?

A. It goes right along by the corner of the building.

Q. I know, but it is just a side track as I understand. I am asking for information. The side track turns off from the Main

Street doesn't it from the street on which the track runs—
728 the track runs up the street don't it?

A. Well it leads off from the main line between two streets.

Q. Now when it passes this building is it in the street?

A. Not exactly, no sir; it is leading off from the street.

Q. Now, Mr. Magee, at the blind crossing you speak of at Main Street, it is the flagman's shanty that would cause it to be a blind crossing isn't it?

A. Why I suppose so, that flagman's shanty though is a part of the building.

Q. Is the flagman kept there all day?

A. Yes sir, that is from 7 a. m. until 6.

Q. Do you do your switching there in the day time?

A. Yes, sir.

Q. Then at this blind crossing there is a flagman kept all of the time when switching is being done?

A. Yes, sir.

Q. Now we will take Marko Mills, what building is it there that stands near the track?

A. The Marko Mills building or elevator on one side of the street and the Coal yard Company's on the opposite side.

Q. How far is that from Main Street?

A. Well it is on the third block.

Q. How many industries do you supply from that track?

A. We supply several from that track, but the cars that
729 we have in going to that track right direct they would only be three.

Q. Three industries?

A. Yes, sir.

Q. About how many cars a day do those industries use?

A. Well it depends; now I should say from one to six cars a day at Marko Mills.

Q. How near is the building there to the track?

A. There is another industry on there, but that I didn't mention, didn't think of at the time. Now what was that next question?

Q. How near are the buildings there to the track?

A. Well the Marko Mills building I wouldn't be positive.

Q. I mean right on the crossing, Mr. Magee?

A. I don't think it is over four feet from the rail.

Q. At the crossing?

A. Yes, sir.

Q. Is there a watchman there?

A. No, sir.

Q. Now take Ash Street or Hammet down there, how near is the building there to the track?

A. Why about the same.

Q. About four feet?

A. That C. L. & T. is close enough to the track that a box car will not clear the building if it is leaning the least bit.

Q. What is the C. L. & T.?

730 A. That is the old Power House, the old Citizen's Light and Transit Company; it is known as the car barns I believe.

Q. That is at Ash Street isn't it?

A. At Ash Street, yes, sir.

Q. How many industries do you supply from that track?

A. Four.

Q. Now take Ash Street, you push those cars in there don't you?

A. Down at that point, yes, sir.

Q. At Marko Mills, you push them in there at that point don't you?

A. Yes, sir.

Q. At Main Street you push them in there too don't you?

A. Yes, sir.

Q. Now suppose that you had—you say it takes five or six cars—that you had a foreman and two helpers and you are pushing cars in there, one man could stand there and watch couldn't he while the other two perform the other duties?

A. Well not in doing the work.

Q. Why couldn't he?

A. With safety, because I could always find a place for my men when I was working where I could use them.

Q. If you are going to push a car across the street at the Marko Mills what is the reason a man couldn't walk up to the crossing and stand there until the cars came along and then catch

731 the car and go on with the cut?

A. Because we needed him in doing the switching before we got there.

Q. The cars are moving, you are going in there?

A. Well we could stop and send a man up there I suppose, but we use him in doing the switching.

Q. Suppose you have three men and you are going to send a man up there, you have to stop until he goes up there don't you?

A. No, in having our third man each man knows his place and he is always right where he belongs.

Q. I know, but he has to go up there don't he?

A. Well he looks out for the crossings.

Q. But you have to wait until he gets there if you are going to let him get on the crossing?

A. We give him a chance to get there, yes sir.

Q. You would give the man a chance if you didn't have but two men?

A. We didn't protect the crossings when we only had two.

Q. You could do it couldn't you?

A. Well we didn't do it.

Q. You could do it couldn't you?

A. Well I couldn't say that I could because we never did.

Q. Can you tell if you are pushing a cut of four cars into one of those crossings you have mentioned, either one of them, and had a foreman and two helpers that you couldn't protect that crossing?

Mr. Jones: He has answered that question.

732 Q. What would the other man be doing when you are pushing cars in; suppose you are pushing a cut of four cars into one of these crossings what would the man be doing?

A. Why they would be out there, they understand their place, assisting in the work.

Q. That is too indefinite; tell me exactly what they would be doing?

A. They would be working.

Q. Tell me how they would be working?

A. Well I don't know as I could hardly tell you just exactly how they would be working; when they get to doing switching and pulling or shoving cars each man would have a certain part to perform.

Q. Just tell what part each man would have to do?

A. Well we place a man on the head end of the cut on the leading car in pushing cars over crossings that way, and a man next to the engine. He is on top of the car; and the others are placed, usually the foreman and one of the men are on the leading car; the man following the engine is on the car next to the engine; and the other one is some place between the engine and the leading car in order to transmit signals.

Q. If you have four cars and have a man on top of the car, the end car going out, that is one man. Now where would the foreman be?

A. The foreman would be on the leading car as a rule.

733 Q. With him?

A. Yes, sir.

Q. Then you would put two men up there, what do you want two men up there for?

A. Why this helper would be there to set a brake on the cars.

Q. What would the foreman be there for?

A. To give the signals, look out for the cars.

Q. Couldn't the man that is going to set the brake give the signal?

A. He couldn't very well give a signal and set a brake.

Q. He would give the signal before he set the brake wouldn't he?

A. He possibly could do it.

Q. You have done it a thousand times haven't you?

A. I have done it, yes sir.

Q. Now where would the other two men be now?

A. Why they would be placed in the positions on the cut in order to transmit signals.

Q. On four cars?

A. Yes, on four cars if that was all you had.

Q. Would it take more than one man to transmit signals on four cars?

A. In some places it does, yes sir.

Q. Now what would you do with the fourth man?

A. I don't quite get you.

Q. Well you have got two men on the end car, a helper and the foreman, then you said you would put another man back
734 on the cars to transmit signals didn't you?

A. No, sir.

Q. Where would you put him then?

A. I told you that the foreman and one man would be on the leading car; one man would be on the car next to the engine; the other one would be anywhere from the car next to the engine to the leading car in order to transmit signals.

Q. Now if you have got four cars, you have got two men on the front car and one on the back car, couldn't they transmit signals?

A. Possibly so.

Q. Now you have got two men on the end car. What is the reason one of those men couldn't have been on the ground out there at the crossing; he could transmit signals couldn't he if he was on the ground?

A. Yes; there is a difference in the locations; he could at some places and he couldn't at some places.

Q. Don't men generally transmit signals from the ground?

A. At times.

Q. If you are on the curve he could stand out on the ground and the man on the top of the car could get the signal and he could give it to the engineer couldn't he?

A. Yes, sir.

Q. What is the reason one of them couldn't stand on the
735 street and give that signal instead of being on top of that car?

A. Well he could at that place?

Q. And couldn't he do it better?

A. Well I don't know that he could.

Q. Do it as well couldn't he?

A. Possibly so.

Q. Then with the two helpers you could have one man on the end of the car going forward, one on the street and one next to the engine couldn't you?

A. How was that?

Stenographer reads the question.

A. You could do that, yes, sir.

Q. Isn't it absolutely unnecessary to have the foreman and the helper both on the end car?

A. Well I don't think so.

Redirect examination.

By Mr. Jones:

Q. Mr. Magee, now the General has asked you in this condition when you had four cars; do you ever have any more than that?

A. Yes, sir.

Q. Does that alter the circumstances of how many you need to transmit the signals?

A. Yes, sir.

Q. Do you have many more than for cars?

A. Yes, sir.

736 Q. Now, Mr. Magee, I want to ask you as a general proposition, not taking one car or four cars, but as a general proposition in shoving those cars around those crossings could they be better protected with three men and a foreman than with two men and a foreman?

A. Yes, sir.

Witness excused.

737

Testimony of H. A. Quenin.

H. A. QUENIN, being first duly sworn, and being called in behalf of the State in rebuttal, testified as follows:

Direct examination.

By Mr. Jones:

Q. What is your name?

A. H. A. Quenin?

Q. Where do you live?

A. Fort Smith, Arkansas.

Q. What is your business?

A. Switchman.

Q. In whose employ?

A. St. Louis, Iron Mountain & Southern Railway Company.

Q. How long have you been a switchman?

A. At Fort Smith three years and a few months.

Q. Were you a regular switchman in the Iron Mountain employ before the three switchman law went into effect?

A. I have been since I have been at Fort Smith.

Q. Did you ever do such a thing as drop a car across a public crossing?

A. Yes, sir.

Q. Did you ever do such a thing as to kick a car across a public crossing?

A. Yes, sir.

Q. Do you ever do such a thing as push a car across a public crossings?

A. We do.

Q. In your opinion as an expert switchman, Mr. Quenin,
738 how many men are necessary to have with each switching crew to properly protect the safety of the public at the crossings?

A. Well from my opinion of it a foreman and three helpers.

Q. Can you do that properly with any smaller number?

A. I don't find it so, no sir.

Q. Where are the crossings in Fort Smith with reference to the business district of Fort Smith?

A. How is that?

Q. Where are the crossings in Fort Smith located with reference to the business district of Fort Smith?

A. I don't understand the question.

Q. That is with reference to where you are switching daily in Fort Smith; how near are the crossing to the business part of Fort Smith?

A. Well they are situated in the business part of the City; that is between the business part and the river, the freight houses and such locations.

Q. Are those crossings that you speak of—do you have any considerable amount of traffic?

A. At some crossings, yes sir.

Cross-examination.

By Mr. Kinsworthy:

Q. Isn't the main yards of the Iron Mountain in Fort Smith on the side away from the town?

A. They are down on the side, part of them, near the river, yes, sir.

739 Q. Well there isn't so much traffic?

A. There is a good deal of traffic on some crossings.

Q. But there isn't as much as there is up town?

A. No—right on the bank, no sir.

Q. You say you have been switching over that about four years?

A. No sir, a little better than three years.

Q. You were switching there before this law went into effect?

A. I was, yes, sir.

Q. How many men then did you have with an engine?

A. Had two helpers and a foreman.

Q. Didn't you do the work then with more safety to the public than you do now?

A. I don't consider it so, no sir.

Q. You didn't have any more trouble then than you do now did you?

A. I have had trouble then and had trouble since.

Q. Don't you know you have had more trouble since than you had before?

A. No, sir, I couldn't say I have.

Q. Don't you know you have had more accidents since you had the third man than you had before?

A. No, sir.

Q. You won't say that you did not will you?

A. I don't understand.

Q. You won't say that you haven't had more accidents since you had the third man than before?

740 A. No sir, I have not.

Q. You don't know whether you have had more or less do you—

The Court:

Q. The question is this—whether you had more accidents before this law went into effect than since for the same length of time?

A. No, sir.

Q. Did not?

A. No, sir.

Redirect examination.

By Mr. Jones:

Q. I don't know whether you understood that question or not. The question is have you had less accidents since the foreman and the third helper went into effect than when you had a foreman and two helpers that you remember of?

A. Well I don't know whether we had more accidents since the three helpers went into effect or not; but the way I understood his question from the time that I had been in the yards before the three helpers and since.

Mr. Kinsworthy: I meant for the same length of time?

A. Why I have had probably more since.

Q. Since the third man was put on?

A. Since the third man was put on.

Q. Do you attribute those accidents to the fact, Mr. Quenin—

741 The Court: Don't lead him.

Q. To what do you attribute those accidents that have happened since; is that because you had the—

Mr. Kinsworthy: I object.

Q. To what do you attribute the accidents?

A. Well I couldn't just exactly explain unless the court knew all of the accidents since the third man has been put on. There has been a couple of automobiles hit there at one crossing, and I consider those accidents as bad as any of the others that I have had. I had several accidents before that, but they were not as bad as these two accidents. Of course the court heard the worst accident.

Mr. Kinsworthy: The Court struck that out.

The Court: Just a general proposition.

Q. Now if I understood you a while ago you said that you thought that you had had more accidents since this law went into effect than before; is that what you said?

A. That is I have had more accident-, that is for the length of time.

Q. Now the question asked you is this—to what do you attribute that fact, the fact that you have had more accidents since this law went into effect; why is that so if you know?

A. I don't know as I can just exactly answer that.

Q. If you cannot say so and if you can answer it.

742 A. Well your Honor, there was probably a couple of those accidents that couldn't have been helped, those two automobile accidents. As I wanted to State that one of the accidents, the last automobile accident, why the automobile stopped on the crossing and the engine was killed on the automobile and couldn't start to get off the crossing where it was struck. I don't think that accident could have been helped, could have been avoided.

Q. Were you kicking cars at that accident?

A. No, sir.

Q. Were you shoving cars?

A. Shoving a cut of about ten or twelve cars.

Q. Where were the men with reference to the cut at the time the accident happened?

A. I and the long field man were standing on the tank car; the short field man was standing on the first high car behind the tank car; the man following the engine was on the car just ahead of the engine.

Q. Now can you explain to the Court, Mr. Quenin, about the other accident, automobile accident, you spoke of, the truck I believe you say?

A. Well that was struck with a light engine at the same crossing; each man was on the foot-board; four men on the front foot-board.

Q. Were there any cars being shoved at that time?

A. No, sir.

Q. Could that accident have been avoided?

743 A. I don't think so, no, sir.

Q. If you had had ten men could that accident have been avoided?

A. No, sir.

Q. Then those two accidents you spoke of, as I understand it the number of men on the crew had nothing to do with those two accidents?

A. No, sir.

Recross-examination.

By Mr. Kinsworthy:

Q. Now do you always guard a crossing with that third man when you are switching?

A. I do, yes, sir.

Q. This first accident you spoke of you said three . . . were on top of the cars and one of them back next to the engine—you didn't have anybody on the crossing did you?

A. No, sir.

Q. Then you don't always guard the crossing do you?

A. In a way I did, yes sir.

Q. How did you guard it?

A. Why the man on the first car, the lookout.

Q. That is the way you guarded it?

A. Not at all times, no sir.

Q. Then this accident happened then because you didn't guard the crossing, was that it?

A. No, sir.

Q. Just an accident happened because you couldn't help it?

744 A. Yes, sir.

Q. You couldn't have avoided it if you had had a hundred men could you?

A. I don't think so.

Q. Then the number of men don't have anything to do with guarding the crossings does it?

A. Not that crossing at that particular time.

Q. Then at particular times it don't make any difference how many men you have it wouldn't make any difference in guarding the crossing?

A. At sometimes it wouldn't.

Q. Now the other accident that happened, the engine was going ahead foremost wasn't it?

A. Yes, sir.

Q. And you had the foreman and three helpers on that engine?

A. Yes, sir.

Q. And the engineer and fireman in the engine?

A. Yes, sir.

Q. And this foreman and three helpers were all standing on the foot-board were they not?

A. Yes, sir.

Q. When that accident happened?

A. Yes, sir.

Q. If you had had forty men on there it wouldn't have helped you would it?

A. Probably some more would have got hurt.

Q. The more you had on there the more would have got hurt wouldn't it?

745 A. Yes, sir.

Q. When they went to run into that truck they all got off but one and he got hurt?

A. All got hurt but myself; one got an arm and a leg broken.

Witness excused.

746 . *Testimony of E. C. Holland.*

E. C. HOLLAND, of lawful age, being duly sworn and examined as a witness on the part of the State, testified as follows:

Direct examination.

By Mr. Jones:

Q. Where do you live, Mr. Holland?

A. Helena.

- Q. What is your business?
 A. Switchman.
 Q. In whose employ are you now engaged?
 A. The St. Louis, Iron Mountain & Southern Railway Company?
 Q. How long have you been a switchman?
 A. Four years for the St. Louis, Iron Mountain & Southern.
 Q. How long have you been a switchman altogether?
 A. About five years and a half.
 Q. Do you ever do such a thing at Helena as to push cars around over public crossings?
 A. Yes, sir.
 Q. Do you ever do such a thing at Helena as to kick cars over public crossings?
 A. Yes, sir.
 Q. Do you ever do such a thing as to drop a car over a public crossing?
 A. Yes, sir.
 Q. Now Mr. Holland these are instances that arise in your everyday ordinary switching life?
 A. Yes, sir.
 Q. In your opinion as an expert switchman how many men are required to perform the daily switching operations with safety to the public at public crossings?
 A. A foreman and three helpers.
 Q. Could you do the work with any less number?
 A. No, sir.

Cross-examination.

By Mr. Kinsworthy:

- Q. Mr. Holland, at what point in Helena do you drop cars across public crossings?
 A. All over the yards.
 Q. Well, name one point?
 A. Well, there is a street called Pontotoc Street.
 Q. Where is Pontotoc Street?
 A. Between Arkansas and Midland Streets——
 Q. Is that within the city limits?
 A. Yes, sir.
 Q. When did you drop a car there?
 A. A couple of weeks ago.
 Q. How often do you drop a car there?
 A. We just make a drop every time we have a car in there.
 Q. How many cars have you put in there in the last week?
 A. The last week? I don't know the exact number, we've put in several.
 Q. Did you ever drop a car anywhere else in Helena, across a crossing?
 A. At Hank's Land.
 Q. Where is that?
 A. It crosses Arkansas Street.

Q. Is there a watchman there?

A. No, sir.

Q. Is there a watchman over Pontotoc Street?

A. No, sir.

Q. For what places do you drop cars at Hank's place?

A. A place called Reave's place in there, and then we drop in there, what we call our storage track we drop over that place.

Q. Mr. Holland, is it against the rules to kick or drop cars across crossings?

A. Yes, sir.

Q. Still you do it?

A. Yes, sir.

Q. Is there any other road switching cars in Helena?

A. Yes, sir.

Q. What road is it?

A. The Yazoo & Mississippi Valley.

Q. How many engines do they use?

A. Two.

Q. They switch cars across the street you are talking about?

A. Yes, sir.

Q. Do they drop cars across public crossings?

A. Yes, sir.

Q. Do they kick cars across the crossings?

A. Yes, sir.

749 Q. How many men on these engines?

A. A foreman and two helpers.

Q. A foreman and two negro helpers?

A. Yes, sir.

Q. They do the same class of work that you do, that is, the same class of switching?

A. They don't handle as much stuff.

Q. How much do they handle, how many engines have you got?

A. We've got four or five, or six.

Q. Don't one of their engines handle as much as one of yours?

A. I can't say that they do.

Q. If the records show they do, what do you say about it then?

Mr. Jones: I object to that; he is not testifying about that. He hasn't seen the records probably.

By Mr. Kinsworthy:

Q. Don't their engine, one of their engines handle as much as one of yours, speaking from observation?

A. I can't say that they do.

Q. Can you say that they don't?

A. Well, yes.

Q. Do you swear that one of their engines, on what is called the Yazoo & Mississippi Valley, don't switch as many cars across public crossings as one of your engines?

A. At times they might handle as much as we do; but as a general rule we handle more.

750 Q. Do they do the same class of switching as you do, with their foreman and two helpers?

A. No, sir.

Q. Don't they do the work just as safe as you do?

A. I don't think so.

Q. Have they had any accidents there at the public crossings?

A. I have no personal knowledge of any accident on these crossings?

Q. You never did either, did you?

A. Not on these crossings.

Q. Did you ever have an accident in Helena in dropping or kicking cars?

A. No, I have no personal knowledge of any, no, sir.

Q. You've been there four years?

A. I've been at Helena three years, going on three years.

Q. And prior to the time this law went into effect you only had two helpers, didn't you?

A. Yes, sir.

Q. And did the same class of work as you are doing now?

A. Yes, sir.

Q. And kicked cars then across crossings?

A. Yes, sir.

Q. And you dropped cars across crossings then?

A. Yes, sir.

Q. And shoved cars across crossings?

A. Yes, sir.

Q. And the same crossings?

751 A. Yes, sir.

Q. And never had an accident at a crossing?

A. No, sir.

Q. What about the Yazoo & Mississippi Valley Railroad across Missouri Street; do they operate across that street?

A. Yes, sir.

Q. Isn't that the most populous street in the city where switching is done?

A. With those folks it is, yes, sir.

Q. Is it more populous than any that you have?

A. No, sir.

Q. Isn't this street that you speak of the one that goes down to the wharf?

A. Yes, sir.

Q. Where all the boats land?

A. Yes, sir.

Q. And where all the traffic that is landed there from the boats is hauled up town?

A. Yes, sir.

Q. Don't the people go across there going to the depot, too?

A. Yes, sir.

Q. Isn't that the main thoroughfare going up town, from the depot and the wharf?

A. Yes, sir, I guess it is.

Q. Don't they operate switch engines—Don't the L. N. O. & T. switch cars across that crossing?

752 A. Not the L. N. O. & T.; the Yazoo & Mississippi Valley, yes, sir.

Q. Well, it is called the L. N. O. & T. sometimes, isn't it?

A. It is the Yazoo & Mississippi Valley.

Q. Well, call it the Yazoo & Mississippi Valley then; they do switching there.

A. Yes, sir.

Q. Right across that crossing?

A. Yes, sir.

Q. Do they drop cars there?

A. I can't recollect a time when they dropped cars there.

Q. Have you ever seen them kick one there? -

A. Yes, sir.

Q. They kick them there, right across that crossing?

A. Yes, sir.

Q. It is more dangerous to kick a car than it is to drop it, isn't it?

A. Why, no, sir, I don't think it is.

Q. About the same?

A. No, sir, I think dropping a car is a little more dangerous.

Q. Why?

A. Well, because it is done so the people wouldn't be expecting them to cross with the engine and car both; the engine and car both are operated at the same time and are going in the same way, and you might watch one and not expect the other.

Q. In dropping a car don't the engine run in front of the
753 car across the crossing, when a car is dropped?

A. Yes, sir.

Q. Anybody getting on the crossing, wouldn't the engineer and fireman see them?

A. Probably see them and probably not.

Q. They would be more than apt to see them, wouldn't they; that is their business?

A. Yes, sir.

Q. Now in kicking a car isn't the engine on the other end, and the engineer and fireman they couldn't see going across a crossing, could they?

A. No, sir.

Q. Now Mr. Holland, could you drop a car on the tail-end of a cut?

A. No, sir.

Q. You couldn't do that?

A. No, sir.

Q. Why?

A. Because, I never did do it.

Q. Couldn't you cut a car off from the Tail-end of a cut and let it run into a switch?

A. I never did do it.

Q. Did you ever stand on the side of a car and cut it off while in motion?

A. No, sir.

Q. How do you cut cars off when you're kicking them in?

A. Cut them off on the ground.

Q. You never stood on a car and cut them off in your life?

754 A. Not that I can recollect.

Q. When in motion you never stood on a car and cut them off?

A. Oh, when I'm kicking cars I've stood on a car and cut them off.

Q. When you're kicking cars—kicking them into a track—you would stand on the car and cut them off and then ride it down?

A. No, sir. I didn't ride it down.

Q. Would you jump off of it?

A. Yes, sir.

Q. If they needed riding you would ride them, wouldn't you?

A. Well, to prevent an accident or something like that, yes.

Q. Now when you had only two helpers, and a man would cut the car off, the one that cut them off would always ride it down?

A. Not the man that cut it off.

Q. Who would ride it?

A. What we call the long field man.

Q. Suppose you had a string of cars, seven or eight or ten, and were kicking them off from the front end of the cut—the one farthest away from the engine; when you cut that car off, when you had two men, how would you do?

755 A. Well, if it wasn't around a curve and the view of the engineer wouldn't be obstructed, the man following the engine, he would cut it off.

Q. He would be down on the cut?

A. Yes, sir.

Q. Would he ride it?

A. No, sir, he would stay in his place.

Q. What would the foreman be doing?

A. He would be giving signals and telling the-, where to cut.

Q. Telling them where to cut?

A. Yes, sir.

Q. They would already know where to cut before they commence cutting, wouldn't they?

A. Not necessarily; sometimes the trains are not carded; sometimes they are and sometimes they are not. We generally—we work principally from the list.

Q. From a list?

A. Yes, sir, from a list.

Q. Where is the principal part of your switching at Helena?

A. The principal part that I do is in West Helena.

Q. The principal part you do is in West Helena?

A. Yes, the principal part of the switching done at Helena proper is what we call our storage track.

Q. Where is that?

A. That is down on Yazoo Street and extends down to the freight house.

Q. Down in the yards?

756 A. What we call the yards, yes, sir.

Q. Isn't the greatest part of the switching in Helena done outside of the corporate limits?

A. Well, no, sir, I think it is about equal.

Q. What per cent of your switching would you do over Pontotoc Street and Hank's Lane?

A. I don't get you.

Q. You said you dropped cars over Pontotoc and Hank's Lane; about what proportion would you do across these two streets, these two places, of the switching you do in and about Helena?

A. We don't do a very large per cent right on these two particular streets.

Q. You don't do one per cent, do you?

A. Yes, we do about 25 per cent.

Q. You tell this court that 25% of all the switching done in Helena is done across these two crossings?

A. I don't do it; the engines do it.

Q. I am talking about all the switching that is done in Helena, by all the engines; you tell the court that twenty-five per cent of that switching is across the Pontotoc Street and this Hank's Lane?

A. I think that would be about right, taking it altogether.

Q. Is there a bell at Hank's Lane?

A. Yes, sir, on the Arkansas Midland side, and there is a watchman there.

Q. A watchman and a bell both?

A. Yes, sir, on the Midland side.

757 Q. How far is the Arkansas Midland side from the other side?

A. I judge a quarter of a mile.

Q. You do work on the Arkansas Midland side?

A. We do work on both sides of Hank's Lane, and across this crossing.

Q. The Arkansas Midland side and the Iron Mountain tracks?

A. Yes, sir.

Q. You do the principal part of your switching on the Arkansas Midland side, or on the Iron Mountain tracks?

A. The principal part is on the Arkansas Midland.

Q. The fact of the business is, that is where nearly all of the business is done for the Iron Mountain; that is, on what is called the Arkansas Midland tracks, isn't it?

A. Yes, sir.

Q. Don't the passenger trains all come in on the Arkansas Midland tracks.

A. Yes, sir.

Q. And most of the switching is done there?

A. Not on the Arkansas Midland, no, sir.

Q. What is the Iron Mountain tracks—what are they used for?

A. Switching.

Q. They are used for switching?

A. Yes, we've got the yards there, and we build our trains and get the cars for the industry tracks ready on the Iron Mountain

758 side, and go to the industry tracks on the Arkansas Midland side.

Q. Now what do you call the main line? Isn't the Arkansas Midland the main line of the Iron Mountain; isn't that cut into it up there at what you call the levee?

A. That is not what we call it; I don't know how you figure it. We always call it the Iron Mountain main.

Q. Well that is the old Arkansas Midland main, and the Legislature required us to raise the track at that crossing at the levee.— You know where it crosses the levee?

A. Yes, sir.

Q. Don't you know in coming on the main line you only have one track and that is the Arkansas Midland?

A. That is the main line I am speaking of; that is the Iron Mountain that comes off of this Arkansas Midland main down in the Iron Mountain yards, or what we call the Iron Mountain yards.

Q. That is the old Iron Mountain track that is down in the yards?

A. Yes, sir.

Q. And the Arkansas Midland main is the one that is brought on up to the passenger depot, and the passenger trains come in on that?

A. Yes, sir.

Q. The principal part of the switching—the principal part is done over the Arkansas Midland tracks?

A. No, sir, not the principal part.

759 Q. I mean the principal part that is done over those crossings?

A. Yes, sir. The principal part of the switching is done in the Iron Mountain yards.

Q. Well, at these crossings, Hank's Lane and this street?

A. In the Iron Mountain yards there.

Q. Well, there's where you have the bell and the watchman?

A. We have a bell and a watchman and a gate, there on the Arkansas Midland.

Q. You have a bell, a gate and a watchman too?

A. Yes, I believe there's a bell and gate and watchman, yes, sir.

Q. You have all three there.

A. Yes, sir.

Q. And there's where you drop these cars?

A. Occasionally we drop them, yes, sir.

Q. Take the switching that you do in the yards at Helena, leaving out the switching at West Helena, isn't the principal part of the switching done logs and timber?

A. Yes, sir.

Q. That is down to these mills?

A. Yes, sir.

Q. Now isn't that all outside of the corporate limits?

A. Yes, sir.

Q. Then the principal part of the switching at Helena is done outside of the corporate limits, either down to these mills or out at West Helena?

760 Mr. Jones: I object to that question.

By Mr. Kinsworthy:

Q. Isn't the majority of the switching logs and timber to these mills?

A. Yes, sir.

Q. And aren't these mills outside of the corporate limits?

A. Yes, sir.

Q. Then the principal part of that switching, leaving that out, is done at West Helena, isn't it?

A. No, sir, the principal part of the other switching is done at the yards, making up and cutting up trains in the yards.

Q. Well, leaving that out, making up and cutting up trains.

A. The principal part is done at West Helena, then.

Q. The principal part of the switching done at Helena is done outside of the corporate limits, isn't it?

A. I don't get you; you're getting outside of the corporate limits; I don't understand you.

Q. I can't make it any plainer; just answer whether you can answer or not. Now isn't the principal part, the industry switching, done outside of the corporate limits?

A. All the industry switching, yes, sir.

Q. Now the other switching, leaving out the industry switching, that is the train switching?

A. Yes, sir.

Q. That is done in the yards?

A. Yes, sir.

Q. How many crossings in the yards?

A. You mean inside the city limits?

Q. Yes.

A. I will have to count them. Let me see—there's fourteen.

Q. Across the yards?

A. That we switch over inside the city limits.

Q. I am not talking about that; I'm talking about the yards, where you break up trains.

A. Two.

Q. Only two?

A. Yes, sir.

Q. And they are located how, in the yards?

A. This Hank's Lane, there's one of them; this Hank's Lane starts right at the end of number seven lead—right at the end of the lead where these two tracks run off from the lead.

Q. Where is the other?

A. Right near the freight house, at number one track, called the team track.

Q. How far is that from Hank's Lane?

A. About a half a block.

Q. About a half a block?

A. Yes, sir.

Q. How long are the yards?

A. Well, the yards—the longest track in the yards holds twenty cars.

Q. Twenty cars?

762 A. Yes, sir.

Q. Then you say you have two crossings there in a half a block of each other?

A. I judge a half a block.

Q. Do you run the streets there in half-blocks?

A. Yazoo Street crosses over the lead coming up to the depot.

Q. Isn't Hank's Lane the south limit of the city?

A. That is south of the city, yes, sir.

Q. Isn't that the south limit—Don't the city stop there?

A. I've always been told that it was within the city.

Q. Within the city limits?

A. Yes, sir.

Redirect examination.

By Mr. Jones:

Q. Mr. Holland, General Kinsworthy asked you if it wasn't against the rule to drop cars, and you answered it was; will you explain to the court why you do it?

A. Why, we do it for the convenience and to get the work done.

Q. Is it known by the officials at that place—if you know—whether they drop cars or not?

A. Yes, sir, they would tell us to do it.

Q. Now the General asked you if the engine don't go over the crossing when a car is dropped; is the engine and car on the same track, Mr. Holland?

A. No, sir.

763 Q. When you are dropping a car, the engine separates from the car—the car is separated from the engine when you drop a car, and the car passes the engine?

A. Yes, sir, the car passes the engine.

Q. Now, he has asked you about switching logs, etc.; he said logs and timbers, at Helena. Now, Mr. Holland, taking the switching altogether, whether industry switching or whether logs—take all the switching, the logs and all the switching you do in Helena and West Helena, do you know where the majority of the switching is done?

A. Do I know?

Q. Whether it is inside the corporate limits or out?

A. The majority is done outside of the corporate limits.

Q. How many switch engines do you work inside of Helena proper?

A. Three; well, in fact we all work inside of Helena at times.

Q. By three being worked inside of the city limits, you mean three are assigned to that?

A. Inside the city limits?—No, sir.

Q. How many engines assigned to the work inside the corporate limits of Helena? That is what I want?

A. I don't know that they are assigned to work inside the limits; one works mostly in the corporate limits, but they all go to the other yards.

Q. Do you know approximately how much time during the day that the engines are working inside the corporate limits of Helena, these switch engines?

A. Well, one; that puts in the majority of the day inside the corporate limits; and I couldn't give you no answer to the other, I don't believe.

Q. What I want to get at Mr. Holland, is whether or not there is a switch engine working during the day in the city of Helena, within the city limits?

A. Yes, sir.

Q. You mean by that inside the corporate limits, or West Helena?

A. Inside the corporation at Helena.

Q. Now I believe you state you have a bell and a gate at the Arkansas Midland; now has the Iron Mountain got a bell?

A. Not on what we call the Iron Mountain side, no.

By Mr. Kinsworthy:

Q. The Arkansas Midland and the Iron Mountain are the same, are they not?

A. Yes, sir.

Q. Just different names for them?

A. Yes, sir, just the different names.

Q. Now have you got any engine that works in the city of Helena that don't go outside of Helena, outside the city limits?

A. No, sir.

Q. Now doesn't every engine—every switch engine that you've got go outside of Helena, outside the city limits, and come into Helena the same day?

A. Yes, sir.

Witness excused.

765

Testimony of H. E. Cashbier.

H. E. CASHBIER, of lawful age, being duly sworn and examined as a witness on the part of the State, testified as follows:

Direct examination.

By Mr. Jones:

Q. What is your name?

A. H. E. Cashbier.

Q. Where do you live, Mr. Cashbier?

A. Helena.

Q. What is your business?

A. Engine foreman.

Q. As engine foreman do you have charge of the switching crew?

A. Yes, sir.

Q. How long have you been a switchman?

A. Thirteen years.

Q. In whose employ are you now engaged?

A. St. Louis, Iron Mountain & Southern Railway Company.

Q. Do you drop cars across public crossings at Helena?

A. Yes, sir.

Q. Do you ever do such a thing as to kick cars across public crossings?

A. Yes, sir.

Q. Do you ever push cars across public crossings?

A. Yes, sir.

Q. I will ask you Mr. Cashbier, from your knowledge as an expert switchman, how many men are necessary to protect the safety of the public on crossings where switching is done?

766 A. Three helpers and a foreman.

Q. Could you protect the public with safety at the crossings with any less than that on your switch engine?

A. No, sir.

Q. Mr. Cashbier, what percentage of the time—what part of a day, if you remember, does the switch engine work in the city of Helena?

A. I don't know anything about only the one I am working on; I don't have time to keep up with the others. I work two hours to two and a half hours in the city of Helena.

Q. The question I want to ask you is: the switch engines, do they operate in the city of Helena all day?

A. No, they are in and out of the city limits.

Q. Does it take any more speed, on an average, to drop a car than it does to kick a car?

A. Oh, of course.

Q. On level ground?

A. Not necessarily on level ground, it don't take any more speed to drop a car than to kick one.

Cross-examination.

By Mr. Kinsworthy:

Q. Then the speed in dropping a car or kicking a car varies according to the grade on the track, and it is about the same in one proposition as it is in the other on the same kind of a track?

A. Yes, sir.

Q. Now you say the engine you work on—Do you work ten hours a day?

767 A. Ten and eleven and sometimes twelve.

Q. You put about two hours a day in the city limits, and the balance of it would be outside of the city limits; is that correct?

A. About two hours or two and a half hours in the city.

Q. That would be about the average of the other engines, wouldn't it?

A. I only know about my engine; I don't know anything about the other engines. I only work on one.

Q. You don't know how the other ones work—how they work on the other engines?

A. No, sir.

Q. How long have you been at Helena?

A. Ten months this month.

Q. You were not there before the law went into effect?

A. No, sir; four days after I went there they put on the third man.

Q. Four days after you went there; you didn't have much experience before they put on the third man, at Helena?

A. No.

Q. Is there another railroad that switches there, besides the Iron Mountain at Helena?

A. The Yazoo & Mississippi Valley.

Q. Does the Yazoo & Mississippi Valley do switching in Helena proper?

A. Yes, sir.

Q. Now as to the amount of switching done by the two roads; I will ask you if the Yazoo & Mississippi Valley don't do
768 more switching within the city limits than the Iron Mountain?

A. I never worked on the Yazoo & Mississippi Valley.

Q. You know where their tracks are?

A. Yes, sir.

Q. Isn't more of its tracks—switching tracks—in Helena than the Iron Mountain?

A. I don't know anything about their tracks in Helena; I've never switched any in their yards.

Q. You know where they are?

A. Yes, sir.

Q. You say you know where their tracks are?

A. Yes, sir.

Q. Isn't all the industries on the Mississippi & Yazoo Valley tracks, except what they have in West Helena, in the city?

A. I don't understand.

Q. Aren't most of the industries on the Mississippi & Yazoo Valley tracks in Helena?

A. All of their tracks are in Helena.

Q. They have no—got any tracks outside?

A. No, sir, the Yazoo & Mississippi Valley haven't.

Q. All the switching they do is in Helena—all the switching they do is in Helena proper?

A. Yes, and they switch for the M. & N. A.

Q. They not only do their switching, but they do the Missouri & North Arkansas switching, don't they?

A. Yes, sir.

Q. All the switching for the Missouri & North Arkansas and the Mississippi & Yazoo Valley—all the cars that both those roads
769 bring in, they switch?

A. I don't catch.

Q. The cars that the Missouri & North Arkansas bring in to Helena to be placed anywhere in Helena have to be switched by the Yazoo & Mississippi Valley?

A. Yes, sir.

Q. And they also have to switch their own cars?

A. Yes, sir.

Q. All their switching is done in the city of Helena?

A. The Yazoo & Mississippi Valley, yes, sir.

Q. How many engines do they use?

A. Two.

Q. How many do the Iron Mountain use?

A. Four, days.

Q. How many have they got now?

A. Four.

Q. They are using two and you are using four?

A. I think so, I am not positive.

Q. What does their switching crew consist of?

A. I don't know.

Q. You have seen them.

A. I don't know what they consist of.

Q. You don't know what they consist of?—Haven't you seen them?

Mr. Jones: If he don't know we will admit that they have a foreman and two helpers.

By Mr. Kinsworthy:

Q. Do you know, Mr. Holland?

A. Yes, sir. He states that the Yazoo & Mississippi Valley switching crews consist of a foreman and two helpers, in
770 Helena.

The Court: I don't see why the witness is required to answer the question if he don't know.

Mr. Kinsworthy: Well, it is admitted that that is the fact.

Mr. Jones: Yes, we admit that the crews consist of a foreman and two helpers.

By Mr. Kinsworthy:

Q. It is admitted that the Yazoo & Mississippi Valley switching crews consist of a foreman and two helpers——

A. I don't know.

Q. I wasn't asking you that; I say it is admitted that that is true. Now don't they switch over the same crossings that you do?

A. Some of them.

Q. Don't they handle cars just like you do?

A. I don't know; I never worked on their engines.

Q. You don't know whether they kick cars or not?

A. No, I work all day and I go home at night.

Q. You don't know whether they do the same class of switching that you do or not?

A. I don't know.

Q. They switch the industry tracks, don't they?

A. I suppose so.

Q. They make up trains there?

Mr. Jones: If you don't know of your own knowledge you needn't answer.

The Court: You are not required to answer anything that you don't know.

771 A. I have never worked for the Yazoo & Mississippi Valley, and I don't know.

Mr. Kinsworthy: I don't see how you could keep from knowing.

By Mr. Kinsworthy:

Q. Did you ever do any switching anywhere else in this State, outside of the city of Helena, or anywhere?

A. Yes, sir.

Q. Whereabouts?

A. At Houston, Texas.

Q. At Houston, Texas. Anywhere else?

A. Trinidad, Colorado.

Q. Trinidad, Colorado?

A. Yes, sir.

Q. Now in switching a car suppose you had a cut of four cars and you wanted to switch them into the industry track, and you had only a foreman and two helpers; how would you do it?

A. You wanted to switch them in there?

Q. Yes; where would you place your men?

A. It's owing to where we had the cars, and on which end of the track the switch is located on.

Q. Suppose you are going to push four cars into the Reaves Lumber Company's spur track?

A. Push them in?

Q. Yes; where would the men be located?

A. A man would be on the head car, the leading car.

Q. Where would the foreman and the other helper be, if you had only two helpers?

772 A. I didn't catch the question.

Q. Suppose you just had a foreman and two helpers, and you say one would be on the head car; where would the other two be?

A. The other two would be where they could give signals.

Q. That the only way you would use them—that would be the only way you would use them, wouldn't it?

A. That would be one way to use them.

Q. That is just while the cars were being moved?

A. Why, no.

Q. What would they be doing while the cars were being moved?

A. We'd have one setting the brakes in moving down into Reaves' plant.

Q. Would you set the brakes while they were moving?

A. Before they were cut off we'd set the brakes.

Q. I understand you wouldn't set the brakes until you got the cars ready to cut them off, would you?

A. That would depend on what part of the track you were on; if you were going down where we are talking about we would set the brakes, going down in there, coming off the main line, to help hold the cut.

Q. I understand then, that one man would cut it and ride the cut after the car was cut off, would he?

A. He would cut it off.

Q. What would the other man do? Would he just walk out in the clear after it was cut off?

A. How is that?

773 Q. What would the other man do?

A. There'd be one man to set the brakes.

Q. What would the other man do?

A. And one man to cut it off.

Q. And the other one?

A. The foreman, he would give the signal.

Q. Couldn't the man on top give the signal?

A. He could.

Q. As a rule, Mr. Cashbier, don't he give the signal when the car gets right down where he wants it, don't he give a signal to cut it off?

A. Sometimes.

Q. Don't he give it as a rule? If he doesn't, who does?

A. The foreman.

Q. Does he run all the way down there?

A. Who, the foreman?

Q. Yes?

A. He goes down to see that it is placed.

Q. This man on top, don't they tell him where they want to place it?

A. He don't know lots of times, no;—he don't know where they want to spot these cars.

Q. You tell me the man on top don't know where they want to stop it?

A. Not always.

Q. If he don't know where they want to stop it, the foreman would have to go down and tell him?

A. The foreman is usually on the head car, and he goes
774 down on that car; he is generally on the head car of lead car.

Q. He is on the same car this other man is on?

A. Sometimes.

Q. Couldn't he tell this man where he wanted to stop it?

A. Sometimes.

Mr. Jackson: I object to this examination.

Mr. Kinsworthy: I've been trying to get one man to answer my question.

The Court: Well, it seems you've been over all that.

Redirect examination.

By Mr. Jones:

Q. You state you worked in Houston?

A. Yes, sir.

Q. How many men in Houston there?

A. A foreman and three helpers.

Q. The General asked you about pushing four cars into an industry track, Mr. Cashbier. Do you ever push any more than that?

A. Yes, sir.

Q. Now who has charge of the engine?

A. The engine?

Q. Yes.

A. The foreman.

Q. Who is responsible for the movements and placing of cars?

A. The foreman.

Q. Who is in charge of the Crew?

A. The foreman.

Witness excused.

775

Testimony of J. A. Creath.

J. A. CREATH, of lawful age, being duly sworn and examined as a witness on the part of the State, testified as follows:

Direct examination.

By Mr. Jones:

Q. What is your name?

A. J. A. Creath.

Q. Where do you live, Mr. Creath?

A. Hope, Arkansas.

Q. What do you do?

A. I am an engine foreman.

Q. As engine foreman what connection do you have with the switching crew?

A. I am in charge of the switching crew at that point.

Q. In whose employ are you engaged?

A. The Iron Mountain's.

Q. Do you ever drop a car across public crossings?

A. I do.

Q. Do you ever kick cars across public crossings?

A. I do.

Q. Do you ever push cars across public crossings?

A. I do.

Q. I'll ask you, Mr. Creath, as an expert switchman—I will ask you how many men is it necessary to have on a crew of a switch engine to properly protect the safety of the public at a crossing?

A. A foreman and three helpers.

Q. Can you do it with any less, as a general proposition?

776 A. I don't think so.

Q. Now Mr. Creath, these instances we speak about dropping cars, kicking cars, and pushing cars, are they not the ordinary instances in switching—

Mr. Kinsworthy: I object.

A. Yes, sir.

The Court: That is leading; that is not the way to ask that question.

Mr. Jones: All right.

Cross-examination.

By Mr. Kinsworthy:

Q. Mr. Creath, how long have you been at Hope?

A. Why I was there five months, or four months, and went to McGehee for four months, and I've been back there five months and a half or six months.

Q. Were you there before this law went into effect?

A. I was not.

Q. You never operated there before then?

A. I've worked into there.

Q. Were you operating at McGehee before this law went into effect?

A. No, sir.

Q. Did you ever operate any other place before the law went into effect?

A. At Hoxie and Gurdon; that is, switching.

Q. Those are the only two places you worked before the law went into effect?

A. Yes, sir.

777 Q. You handles as long a train at Hoxie as you do at Hope?

A. Longer.

Mr. Jones: We object to anything about Hoxie. That is not a city of first or second class.

The Court: No, that is not a city of first or second class, and the objection will be sustained.

By Mr. Kinsworthy:

Q. What class of switching do you do at Hope?—making up trains, or industrial work?

A. I wouldn't hardly know; nearly all the industrial work and delivery work is to the L. & A. and the Frisco.

Q. Nearly all of the delivery work is to them?

A. The delivery work is to them and nearly all the industrial work too, but we have quite a few trains to make up.

Q. That is, you mean you don't really make up any trains, what you call making up trains?

A. Yes, sir, we make up three locals and on an average of one through freight each day.

Q. When are they made up, what time in the day?

A. Well, the south-bound local leaves there at 4:30; the branch train at 3:30; the north-bound is due at 6 o'clock; and the north-bound local leaves there from 9 o'clock in the morning until 1 o'clock in the afternoon.

Q. Where are these trains made up?

A. At different places in the yard, wherever they have room enough to line them up.

Q. You say you kick cars there; at what point?

778 A. All over the entire yards.

Q. All over the yards?

A. Yes, sir.

Q. Don't you know it's against the rule to kick them?

A. Not that I know of.

Q. Don't you know it is a violation of the rule?

A. I do not.

Q. You drop them?

A. Yes, sir.

Q. Whereabouts?

A. Nearly at every switch in the yards with one or two exceptions.

Q. Couldn't you push them instead of dropping them?

A. If we had room to run around the other cars. We don't make a practice of dropping cars if there's any chance to get around.

Q. Well, you don't make any chance to get around, do you?

A. Yes, sir, we do; we don't shove them in there unless we can't get around.

Q. If you were going to kick a car into a track, tell me how you would do it?

A. What do you mean?

Q. Just go ahead and state how you do it.

A. We'd start the cars rolling and pull the pin.

Q. Who would pull the pin?

A. The man following the engine, he's the pin puller.

Q. Suppose you cut one car off a string, who would cut it off?

779 A. The pin puller, if he was there; if we were working around a curve there the short field man or myself, if the pin puller had to give the signal.

Q. Would you stand on the car and pull the pin?

A. I never; we nearly all of us walk along the side of the car and pull it.

Q. Are nearly all the switches right down hill?

A. I won't say all of them; some of them are up-hill.

Q. The train moves slowly so you can walk along by the side of the train and pull the pin?

A. Nearly every time.

Q. Then you don't have to move them across the crossing very fast in kicking cars?

A. We do on what we call number four. There's two pocket tracks there and one blind, there on the Y.

Q. Where is that?

- A. Right on the freight-house drop.
Q. Is that a public crossing there?
A. Yes, sir, it is one of the main streets at Hope.
Q. How do you do on below there?—Anything?
A. There's nothing below there.
Q. Now do you put a man on the crossing there?
A. I stand there myself.
Q. The foreman stands there?
A. I sure do.
Q. Suppose you had two helpers, and one man would cut off the car?
A. Yes, sir.
780 Q. The other would ride the car?
A. Yes, sir.
Q. Who would give the signal to the engineer?
A. I would give the signal to the engineer, into this track here; I would give the signal and go to this switch.
Q. You would go to the switch when you gave the signal to the engineer?—You would give the signal after you got there then?
A. No, sir; I'd give the signal and then go to the switch.
Q. You'd give the signal and then go to the switch?
A. Yes, before the engine was in operation.
Q. Then when you cut one car off you would go and turn the switch for another?
A. Yes, sir.
Q. And do the same way?
A. Yes, sir.
Q. You would stand on the crossing and give the signal to the engineer?
A. Yes, sir.
Q. Then with two helpers you could do the work all right?
A. Over that crossing in switching a cut of cars I believe I could.
Q. Now you say most of the work is transferred from the Iron Mountain and Frisco?
A. No, from the Iron Mountain to the Frisco and the L. & A., and vice versa.
Q. You pull these cars up and push them or shove them in there?
781 A. We shove them in the L. & A. and then pull them back.
Q. Whenever you shove them over there, how do you place your men?
A. The pin puller is on the car next to the engine; the long field man or the short field man is out there—we send a man—one man goes to the junction of the Frisco and the Iron Mountain and lines up the switches, all of the switches there, as he goes up there; and as a general rule I always have enough cars at the crossing to couple down there. Then we start to shoving, and this other switchman makes the coupling, and I watch the crossing at the freight house.
Q. What freight house?
A. The Iron Mountain freight house. I walk to the crossing

there—there's a foot-crossing there by the depot; there's no driveway right there—and I go to that crossing and then to the crossing where the connecting tracks leads off the main line, and head these cars off there and then ride the head car over to the L. & A. track.

Q. You walk along in front of the cars to this crossing?

A. Yes, sir.

Q. If you didn't have but one man you could do that, walk along in front of these cars?

A. You could walk along in front of these cars to these two crossings, yes, sir.

Q. You could walk along as far as the car went?

A. You could walk along to these two crossings, yes, sir.

782 Q. You are going to something else there; I say you could walk along in front of these cars until you got to all of these crossings?

A. You couldn't see the engineer at all of them.

Q. You could see the man on top of the car, and the man on top of the car could see the engineer. I know that locality pretty well myself. Now the man on top of that car could see the engineer and fireman and he could see the man anywhere on that cross-over track?

A. The man on the cross-over track would be next to the engine.

Q. You mean you've got a man on the other end too, have you?

A. Yes, sir.

Q. You've got a man on the front end or a man on the front car?

A. Yes; and one man at the crossing.

Q. You state you walked along in front of it?

A. We have one man at the crossing, and another at the L. & A. and the Frisco, and you're walking along there in front, right around there, you can't see on account of the Barlow Hotel and the K. G. McRae storage room, around that curve, or around that point. The curve is a kind of a horseshoe curve, and you have to put a man on that crossing there, (indicating on paper) on account of this curve on this Frisco main line here:—

Q. Don't you know that you pass the Barlow Hotel long before you get there?

783 A. No, sir.

Mr. Kinsworthy: I do.

Mr. Jones: General, don't argue with the witness.

By Mr. Kinsworthy:

Q. Now suppose this is the Iron Mountain track, and here is the Frisco here, and here is the side track, or this track that goes right on up this way, say, and here is the Barlow Hotel, and the Southern is right here; now the cross-over track starts right over here (indicating)?

A. Yes, sir.

Q. And goes around that way?

A. Yes, sir.

Q. Don't you know that lot is all vacant here?

A. No, sir.

Q. Now whose building is that (indicating)?

A. That is K. G. McRae's.

Q. How far is it from that building to the cross-over track?

A. How far is it?

Q. Yes?

A. About eight or nine feet.

Q. Well you testify that building is within twenty feet of that track?

A. Yes, sir. I reckon you could run a wagon through there is about all.

Q. Now if there is a man riding on top of this car here he would give a signal back to this man here on this engine; how far would that be?

784 A. About eight car lengths or nine car lengths.

Q. Then the man back nine car lengths could then give the signal to the engineer?

A. Yes, sir, this man here (indicating) has to be here to give signals, and you see he can't see whether this L. & A. line is clear until he gets around here, and this man here has got to give these signals when he sees that this L. & A. line is clear.

Q. Can't you tell whether the L. & A. main line is clear by walking in front of these cars before you get to it?

A. No, sir, not unless you go to this crossing right here (indicating).

Q. Take these cars here: couldn't you stop at the passing track here and see that the main line was clear, get a clear view of the main line at this crossing here?

A. Not unless you came to the crossing here.

Q. You wouldn't have to come clear up here to see if this crossing was clear, would you?

A. You see in pushing around to see if this main line is clear you'd have to send a man up to that place there or come up to here (indicating).

Q. Say, right here is where McRae's store room is; you'd go right over here and stop on this passing track on the main line of the Frisco; couldn't you see the crossing both ways?

A. What crossing do you mean?

Q. Any crossing on the Frisco both ways?

A. Why yes, if you go up here (indicating).

785 Q. This is the Frisco main line, and here is the crossing above here; couldn't you give a signal to the engineer from here?

A. The engineer couldn't see a man on top of the car in here. The man on top of the car, if he is far enough back here, the engineer couldn't see him.

Q. There isn't anything between this pass-over track and the Frisco track there to cut off the view, is there?

A. No.

Q. And a man on top of the car here could see you anywhere from that Frisco track there down to the freight house?

A. Not unless he stood out here (indicating). Then if he did he would not be on top to protect the street crossing.

Q. You've already got a man on top. I am talking about where you would be if you were walking along on the track to the crossing?

A. Well, you have no way of telling, after you get out here, you would have to go up here and see the Frisco and the L. & A. main line is clear; then you would walk on up this way. As a general rule we have eighteen or twenty cars to deliver over there, and you've got to have a man back here at least ten car lengths to see the signals.

Q. Mr. Creath, when you can't see the signals isn't it your duty to stop?

A. Yes, it most assuredly is.

Q. How many transfers do you make a day from the
786 L. & A. and the Frisco over to the Iron Mountain?

A. Well, we make one in the morning between—shortly after eight o'clock, as soon as we can get over there with the merchandisc. We never have more than five or six cars and maybe sometimes not more than two.

Q. Now let me get that correct: In the morning you make a transfer and you say you never have more than five or six cars?

A. Not in the morning. We do that as soon as we go to work.

Q. All right.

A. And then, after that, in the morning as soon as we get that stuff broken up and the L. & A. stuff lined up, it is generally 10:15; and then we will take that over.

Q. How many do you handle then?

A. Eighteen or twenty-five cars.

Q. Can you tell me one time when you handled twenty-five cars over there?

A. If I had my delivery book I could tell you.

Q. How many cars will you handle on that track, on an average, a day?

A. Deliver, you mean?

Q. Yes, receive and deliver; how many on an average a day?—or about how many?

A. Well, four or five in the morning, maybe not that many, and then eighteen or twenty-two about 10:30, and then sometimes we have to make a delivery in the afternoon.

Q. Then you state to the court, on this ten car track you will average in the morning from two to six cars?

A. Yes, sir.

Q. And in the afternoon—

A. No, at 10:15 to 10:30, from fifteen to twenty.

Q. And then sometimes you say you make a delivery in the afternoon?

A. In the afternoon we will have sometimes five or six.

Q. Do you know how many cars are transferred annually from the L. & A. to the Iron Mountain and the Frisco to the Iron Mountain?

A. I do not.

Witness excused.

788

Testimony of J. Thornbrough.

J. THORNBROUGH, being first duly sworn, and being called in behalf of the State in rebuttal, testified as follows:

Direct examination.

By Mr. Jones:

Q. What is your name?

A. J. Thornbrough.

Q. What is your business?

A. Brakeman and switchman.

Q. Where do you live?

A. Hot Springs.

Q. In whose employ are you now engaged?

A. The Iron Mountain.

Q. Where?

A. At Hot Springs.

Q. Do you ever do such a thing as drop a car across public crossings here?

A. Yes, sir.

Q. Do you ever do such a thing as kick a car across public crossings?

A. Yes, sir.

Q. How long have you been a switchman?

A. A switchman and brakeman four years.

Q. Do you ever do such a thing as push a car across public crossings?

A. Yes, sir.

Q. Mr. Thornbrough, in your opinion as an expert switchman how many men are necessary to have with each switching crew in the City of Hot Springs to properly protect the safety of the public at the crossings?

789 A. Well, we have never had but two here.

Q. In your judgment how many is necessary to properly protect the safety of the public at the crossings?

A. A foreman and three helpers.

Q. Can you do it with any less in your judgment with the proper safety?

A. No, sir.

Cross-examination.

By Mr. Kinsworthy:

Q. How long have you been a brakeman and switchman at Hot Springs?

A. Four years.

Q. Then your entire service has been here?

A. Practically.

Q. And you have been doing switching at Hot Springs for four years?

A. Yes, sir.

Q. You have never had anything but the foreman and two helpers?

A. That is all.

Q. That is all you have now?

A. Yes, sir.

Q. Don't you do the work that is necessary to be done here?

A. Yes, sir.

Q. Don't you do it with safety?

A. I couldn't say we do, no sir.

Q. You don't hurt anybody do you?

790 A. We haven't, that is when I am with the crew.

Q. And for the four years you have been doing switching here at Hot Springs you have done it?

A. Yes, sir.

Q. And you do it well?

A. I suppose so.

Q. And you haven't hurt a man?

A. Not that I could recall, no, sir.

Q. Haven't hurt anyone?

A. No, sir.

Witness excused.

791

Testimony of J. A. Cash.

J. A. CASH being first duly sworn, and being called in behalf of the State in rebuttal, testified as follows:

Direct examination.

By Mr. Jones:

Q. State your name?

A. J. A. Cash.

Q. Where do you live, Mr. Cash?

A. Hot Springs.

Q. What is your business?

A. Switchman.

Q. In whose employ are you engaged?

A. Iron Mountain.

Q. How long have you been a switchman?

A. Three years and two months.

Q. Mr. Cash, in your opinion as an expert switchman how many men are necessary with the switching crew to properly protect the safety of the public at the crossings?

A. Well I should say a foreman and three helpers in this place would be best for the safety of the public.

Q. Mr. Cash, who was the man if you know that was Yard Master here during the last Fair?

A. I was appointed Yard Master here.

Q. As Yard Master at that time, Mr. Cash, did you have any part in the switching operations?

A. Yes, sir, I did.

Q. Did you ever at any time help the switchmen in doing the switching?

792 A. I certainly did; I worked harder than I ever worked here before.

Q. Did you act as a helper at the time?

A. I worked right there, throwed switches and done everything else there was to do in the yards.

Cross-examination.

By Mr. Kinsworthy:

Q. You had the Train Master over here part of the time too didn't you?

A. Yes, sir.

Q. During the Fair you have got a crowded time here?

A. Yes, sir.

Q. And as foreman you were busy there about the passenger trains more than anything else were you not?

A. I was busy helping take care of the passenger trains, yes, sir.

Q. That really was what you were busy at wasn't it? You were busy all of the time with the passenger train wasn't you?

A. Not all of the time.

Q. Did you switch a freight car during that time?

A. Yes, sir. We had from one to three freight trains a day in here.

Q. Did you work with the engine when they were switching freight trains?

A. Yes, sir.

Q. What were the other men doing?

A. They were working too.

793 Q. How many passenger trains did you have in here a day then?

A. The same passenger trains we have now, regular trains.

Q. How many extras?

A. During the Fair I don't remember how many extra trains we had.

Q. You had a good many didn't you?

A. Yes, sir, we did.

Q. And some of these passenger trains were run in two sections were they not—take number 18, did you have two sections at that time?

A. We have had as high as three number 18 out of here.

Q. And the business was greatly increased.

A. Yes, sir.

Q. And you were appointed Yard Master during that time?

A. Yes, sir.

Q. But the switching crew still consisted of a foreman and two helpers didn't it?

A. Yes sir, I appointed one of the boys as engine foreman at the request of Mr. Moore.

Q. With the exception of the time of the Fair you have been handling all of the switching here with a crew consisting of a foreman and two helpers haven't you?

A. Yes.

Q. You have done the work al-right haven't you?

A. We have done it.

Q. You have done it with safety haven't you?

A. We haven't hurt anybody.

794 Q. During the entire time; the years you have been here you haven't hurt a single person?

A. The only person I have hurt was on the Y; that was out of the city limits.

Q. Wasn't on the crossing either was it.

A. Yes sir, on the crossing.

Q. Out of the city limits?

A. Wasn't in the City of Hot Springs.

Q. How come you to hurt that fellow on the Y?

A. Well I was sent down there with the fireman to clear the Y so the engineer and the engine foreman and other man could turn number 17, and place the cars on the Y for the Missouri Lumber Company; at that time we had to hurry on expecting crowds to be here and taking a fireman and one helper down there to switch the engine.

Q. When was that?

A. That has been two years ago.

Q. You don't do that now?

A. No, sir.

Q. Isn't it a fact that during the Fair for three days that the Iron Mountain ran only merchandise and perishable fruit cars into this town?

A. Let me explain again—I was appointed Yard Master here the last day of the Fair, and I was Yard Master four days; the last day of the Fair, then the next three days, and the first day of November.

795 I was here the 1st, 2nd, 3rd and 4th of November as Yard Master; that was the last day of the Fair and *and* the three next days.

Q. Did the Iron Mountain run any freight cars in here during that time except merchandise and perishable freight?

A. Did while I was Yard Master, yes.

Q. While the Fair was going on?

A. No, I won't say; the last day of the Fair, about that.

Q. I will ask you if they did while the Fair was going on?

A. To the best of my knowledge I wouldn't say whether there was anything except merchandise and perishable stuff going in or not.

Q. To the best of your knowledge will you say whether they did or did not?

A. Well I don't know whether there was or not.

Q. Well as Yard Master you ought to have known oughtn't you?

A. As I said I was Yard Master the last day of the Fair.

Q. Only one day?

A. One day of the Fair.

Q. That is the only time you were Yard Master?

A. Yes, sir.

Q. Then you were not Yard Master all of the time?

A. Not during the Fair.

Q. Who was Yard Master during the Fair?

A. Mr. Loomis was Yard Master the first part of the Fair?

Q. Where was Mr. Loomis?

796 A. On the Pine Bluff passenger train. Mr. Cobb was laying off and he taken his place on the passenger train.

Q. Who was with the engine during that time you were Yard Master?

A. Me and the other three boys.

Q. Were you with the engine all of the time?

A. I was with the engine principally all of the time, yes sir.

Q. What was the engine doing all of that time?

A. It was working?

Q. Working with the passenger trains?

A. Yes sir, and with freight cars.

Q. How many freight cars did you switch that day?

A. Quite a number of them; I don't remember how many; handled quite a number of cars.

Witness excused.

Recess taken until 1:30 p. m.

797

Testimony of J. F. Murphy, Recalled.

Afternoon Session.

J. F. MURPHY, being recalled in behalf of the defendant in rebuttal, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. Mr. Murphy, in dropping cars in the yards, if you had four cars to the engine and wanted to drop the rear car could it be done?

A. It could.

Q. How would you do it?

A. The same as you are dropping from the engine, but in dropping the fourth car the man would stand on the ladder with his foot in the stirrup and reach down with either hand or his foot and raise the lever.

Q. With either?

A. Either. It is usually done by putting the foot on the lever and lifting or if they pull it up with their hand they shove it back over the run-about and it will set. It is the safer plan to cut the car off standing in the stirrup on the side of the car than it is on the footboard of the engine.

Q. Why?

A. Because you are not between the cars.

Q. Any other reason why it is dangerous to stand on the foot-board of the engine?

A. There are many hazards that could arise. He could run over a draw-bar and knock the foot-board off. The engineer under
798 certain conditions can jerk the engine from under them; while that condition would not prevail if he is on the ladder of the car with his foot in the stirrup, and the Railroad Company has spent millions of dollars to keep men from being injured between the cars.

Mr. Jones: I object to that. We ask the Court to strike out that testimony from the record.

But the Court overruled the motion of the State and allowed said testimony to stand, to which ruling of the Court the State at the time excepted and asked that her exceptions be noted of record, which was accordingly done.

Q. When you go to drop a car as soon as it is cut off what does the engineer do, as soon as you pull the pin, the helper pulls the pin, what does the engineer do?

A. He opens up his throttle, and kicks the cars and engine away from the one he wants to pull off.

Mr. Jones: I object; it is not rebuttal testimony.

Q. Mr. Murphy, which is the more dangerous, to stand on the footboard of the engine and cut the car off or stand on the car and cut the car off?

A. It is more dangerous on the foot-board.

Q. Why?

A. Because if you are jerked off the foot-board you are between the rails, and if you are thrown off from the side of the car you wouldn't fall between the tracks.

Q. Suppose you are kicking cars in the yards, could the
799 man stand on the car you are going to kick and cut it off?

A. Sure.

Q. Could he ride it down?

A. Sure.

Q. One man could cut the car off and ride it down?

A. Sure.

Q. Could he stand anywhere else and cut it off?

A. No, unless he ran along by the side of the car or got in on the break beam, which is absolutely dangerous.

Cross-examination.

By Mr. Jones:

Q. Mr. Murphy, what is the height of the highest ladder on a flat car?

A. Even with the floor of the car, about four feet six approximately.

Q. When a man was hanging on the side of a flat car and went

to cut it off, he would have to reach over and hold with one hand and pull the lever with the other?

A. Yes.

Q. And he would be leaning at that time?

A. Yes.

Witness excused.

800

Testimony of H. C. Lerew, Recalled.

H. C. LEREW, being recalled by the defendant in sur-rebuttal, for further examination, testified as follows:

Direct examination.

By Mr. Kinsworthy:

Q. Mr. Lerew, in dropping cars can a man stand on the car and cut it off with as much safety or more than he can on the engine?

A. Yes, sir.

Q. Which is the safer place for him to stand?

A. I should think the safest place would be for him on the car.

Q. Why?

A. For the same reasons Mr. Murphy stated.

Q. Your testimony has got to go down there?

A. For the reason he is liable to be jerked off when the engineer opens up his engine and moves it away from the cars; if he hasn't got a firm hold on the engine he is liable to be jerked away from it and consequently under the cars.

Q. Can a man cut off a car and ride it down, the same man?

A. Yes, sir.

Q. In kicking cars where would the man stand to cut the car off?

A. Depends on which end of the lead he was on.

Q. Would he stand on one car or the other to cut it off?

A. They usually put one foot in the stirrup, one hand on the grab-iron, and usually one foot on the oil box.

801 Q. Could he stand anywhere else except on the car to cut it off?

A. No, sir, unless he ran under the—along the ground.

Q. Could one man cut the car off and ride it down too?

A. Yes, sir.

Cross-examination.

By Mr. Jones:

Q. Mr. Lerew, what is the height of the highest draw-bar on a flat car—I mean the highest grab-iron?

A. Something like four feet.

Q. What is the distance between the step the man would have to put his foot on and the highest grab-iron?

A. About two feet.

Q. Then the man would hang out and his feet would be only two

A. It won't average over two at a time on an average.

Q. These cars are taken from the train and carried to the various industries or tracks where they are located?

A. Yes.

Q. And if they are to be unloaded on the common loading track they are put on that are they?

A. Yes, sir.

Q. Then as I understand in handling this freight switching here in Hot Springs the number of cars that the engine would handle each time in breaking up this train would be about one or two cars each time; is that correct?

826 A. Yes, ordinarily be about two.

Cross-examination by Mr. Witt:

Q. What length of time is consumed in switching a train, usually?

A. Well you mean passenger trains?

Q. Yes; we will take the passenger trains?

A. I think it usually takes about twenty minutes.

Q. Would it take any more help or require any more help if there were a dozen coaches than it would if there was five or six?

A. No, sir, I think the same amount of help would do the work just the same.

Q. Then why is it necessary to have an extra helper when you bring in a large train; for instance on Fair days?

A. They have a yard master on Fair days on account of the volume of business. He has to look after the details; that is the reason we have a yard master.

Q. Do you know how many different industries that the cars supply here, furnish or accommodate?

A. No, I don't know the number of them. There are different ones located on our tracks. I suppose there is a dozen.

Q. When you speak of three cars coming and three out does that mean one switching; you had three passenger trains in and three out, does that mean three switchings or six switchings?

A. You have got to switch these trains twice; when they come in have to put the train away, and when it went out have to place the train in the passenger depot; have to handle the train twice.

Q. Don't you frequently have an unusual number of freight cars to handle at certain seasons of the year?

A. Of course during certain seasons of the year we have more than others?

Q. On those occasions couldn't that switching be done and these cars handled with better facilities if you had an extra helper?

A. Well it might. Of course I am not able to say on that point.

Q. You couldn't say an extra helper would be unnecessary on these occasions would you?

A. When we have a great deal of heavy business I suppose it would.

By Mr. Kinsworthy:

Q. Mr. Schweer, as I understand, you have an extra man who takes the place of foreman during Fair time. Is that correct?

A. Yes, sir.

Q. He is not a helper with the engine, is he?

A. No, sir.

827 Q. He doesn't go with the engine and switching crew at all does he?

A. No, sir.

Q. In other words, he checks up the yards, sees what work there is to be done and keeps the train dispatcher informed of the amount of work that is necessary?

A. Yes, sir, he directs the work and looks after things.

Q. On these days the same switching crew does the switching that it did on other days don't it?

A. Yes, the same crew.

Q. On ordinary days why you don't need the foreman of the yard to take up this work, but when you have a great deal of it you need him for that purpose?

A. Yes.

Q. Now suppose there were two engines here, two switch engines with switching crews, why this same foreman would do the checking for both of them wouldn't he?

A. Yes, sir, he would line up the night switch crew.

Q. Are you familiar with switching terminals?

A. Of course I am not a switchman.

Q. They have a terminal yard master?

A. Yes, sir.

Q. He doesn't have anything to do with the switching of the cars does he?

A. No, sir, I should think not.

Q. But he just simply directs what work is to be done?

A. Yes.

Q. Now for instance take Little Rock. You might have a terminal yard master and have six engines at work, yet he wouldn't go with any of the engines would he?

A. No, sir.

Q. But he would direct the work to be done by each engine?

A. That is the way I understand it.

Q. And that is what caused this extra man to come here as yard master and not as an extra helper?

A. Yes, as yard master.

Q. He don't go with the engine as a helper?

A. No, sir.

By Mr. Witt:

Q. Who does the work on ordinary days that he does, that man does on Fair days?

A. Well the three men. You see the foreman and the helpers, they do that work.

828 Twenty-eighth. Because the court erred in overruling the defendant's motion to strike from the record and to instruct the stenographer not to copy any of the testimony in regard

feet below his hand. He would be hanging on with one hand and one foot on the other?

A. He would have one foot in the stirrup, one hand on the grab iron and one foot on the oil box.

Q. Mr. Lerew, what is that oil box put on that car for?

A. To carry the weight of the car and the journals.

Q. Is there a step on that oil box?

A. No, sir.

Q. Don't that wheel turn on that oil box?

A. Yes, sir.

Q. What is the distance from the oil box to the wheel?

A. It varies in the difference of the size of the cars.

Q. Isn't there just a few inches between the oil box and where that wheel is turning?

A. You mean the front or the rear?

Q. The oil box itself?

A. Those oil boxes vary.

Q. Any part of the oil box, take any part of it where a man puts his foot, what is the distance?

A. About 14 inches in a large box.

Q. Then you say that a man could hang on the flat car with his hand on the grab iron?

A. They don't usually in cutting off a flat car; they don't usually hang on to it.

Q. Then you couldn't do it with safety on that flat car could you, hang on it and cut it?

A. Yes, sir.

Q. Do you think it would be safe, Mr. Lerew?

A. Yes, sir.

Q. To hang out there with one hand on that grab iron four feet from the ground and your foot on the step 24 inches below you and another foot up against the oil box; do you think that is a safe proposition?

A. It is not necessary to do that with a flat car.

Q. Don't they drop flat cars?

A. Yes.

Q. What would you do if you had a flat car then?

A. Jump on top of it and stoop down.

Q. Then you wouldn't be in that position on the flat car would you?

A. No, sir.

803 Q. Then you wouldn't hang out like you said there on the flat car would you?

A. Not necessary, no. If I was going to cut off a flat car I wouldn't hang on it at all; I would cut it from the ground.

Q. Then would it be safe to hang on it and ride it like you said?

A. You wouldn't be riding it if you cut it from the ground.

Q. Didn't you say you could?

A. Yes, you can, but you hang down when you do that.

Q. Do you think it is a safe proposition?

27-302

A. Yes, sir.

Q. While you are on the car just cut it and ride it in that position; do you think that is safe?

A. Yes, sir, it is done daily.

Q. Did you ever see a flat car that was loaded up at the ends difficult to get on it?

A. Yes, you cannot ride on that kind unless there is some place to hang on.

Q. Now those oil boxes are kept there for the purpose of lubricating the wheels are they not?

A. Yes, sir.

Q. And they are greasy are they not?

A. Not on the outside usually.

Q. Mr. Lerew, did you ever see an oil box in all of your life in all of your railroad experience that wasn't greasy, have oil on it?

804 A. Not to the extent where it would make it dangerous.

Witness excused.

The foregoing was all the evidence introduced in the case.

805

Instructions for Defendant Refused.

Thereupon the Defendant requested the Court to find the Law and Facts as follows:

1.

The verdict should be for the defendant.

The court refused to find the law and facts as requested by defendant in its request numbered 1; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

2.

The court finds on investigation of the defendant's special plea, that the Act of the General Assembly of the State of Arkansas, No. 67, entitled, "An Act for the better protection and safety of the Public," which was approved February 20, 1913, and which provides that no railroad company or corporation owning yards in the cities within the State where switching of cars is made across public crossings shall operate their switch crew, or crews, with less than one engineer, a fireman, a foreman and three helpers, is invalid and of no effect, and the defendant is therefore not guilty of its violation.

The court refused to find the law and facts as requested by defendant in its request numbered 2; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

3.

The Court finds that the requirement of the Act of the General

806 Assembly of the State of Arkansas, No. 67, entitled, "An act for the better protection and safety of the public," and approved February 20, 1913, that no railroad company or corporation owning or operating any yards or terminals in the cities within the State where switching, pushing, or transferring of cars are made across public crossings within the city limits of the cities, shall operate their switch crew, or crews, with less than one engineer, a fireman, a foreman and three helpers, is arbitrary and unreasonable, and there is no public necessity therefor, and said act is therefore invalid and of no effect, and the defendant is not guilty of its violation.

The Court refused to find the law and facts as requested by defendant in its request number 3; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

4.

The court finds that the employment and use of an engineer, a fireman, a foreman and two helpers on switching crews in the cities of the first and second class, as operated by the defendant in the City of Hot Springs, is amply sufficient for the safe conduct of switching operations by switching crews in said city, and the employment of an additional or third helper thereon is not reasonably necessary for the safety of the employees thereon or the public.

The court refused to find the law and facts as requested by defendant in its request numbered 4; to which ruling of the Court, the defendant, by its counsel, then and there duly excepted.

807

5.

The Court declares the law to be that the application of the requirements of the Act of the General Assembly of the State of Arkansas, No. 67, entitled, "An Act for the better protection and safety of the public," approved February 20, 1913, to defendant railroad companies or corporations operating railroads more than one hundred miles in length and the exemption from the application of said act of railroad companies or corporations operating railroads of less than one hundred miles in length, is a denial of the equal protection of the law to the defendant herein, and to other railroad companies or corporations operating railroads more than one hundred miles in length, and said act is therefore in conflict with Section 1 of Article 14 of the Articles in Amendment of the Constitution of the United States, and is therefore unconstitutional and void.

The court refused to find the law and the facts as requested by defendant in its request numbered 5; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

6.

The court declares the law to be that the provisions of the Act of the General Assembly of the State of Arkansas, No. 67, entitled

"An act for the better protection and safety of the public," approved February 20, 1913, which provides a penalty for the violation thereof of a fine for each separate offense of not less than Fifty Dollars, and that each crew operated in violation thereof shall constitute a separate offense, without providing in said act a maximum fine or any limit to the amount which can be assessed as a fine for the violation of said act, are in conflict with the prohibition of Section 9 of Article 2 of the Constitution of Arkansas, which prohibit- the imposition of cruel and unusual punishment, and said act is therefore unconstitutional and void.

The Court refused to find the law and facts as requested by defendant in its request numbered 6; to which ruling of the court the defendant, by its counsel, then and there duly excepted.

7.

The court declares the law to be that the provisions of the Act of the General Assembly of the State of Arkansas, No. 67, entitled, "An act for the better protection and safety of the public," approved February 20, 1913, which provide- a penalty for the violation thereof of a fine for each separate offense of not less than Fifty Dollars, and that each crew operated in violation thereof shall constitute a separate offense, without providing in said act a maximum fine or any limit to the amount which can be assessed as a fine for the violation of said act, are in conflict with the provisions of Section 1 of Article 14 of the Articles in Amen-ment of the Constitution of the United States, which provide that no State shall deprive any person within its jurisdiction — the equal protection of the law, and said act is therefore unconstitutional and void.

The court refused to find the law and facts as requested by defendant in its request numbered 7; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

809

8.

The court finds that defendant's switching crew and its operations, which are complained of in the plaintiff's information herein, was at the time of the operation complained of engaged in interstate commerce, and the Act of the General Assembly of the State of Arkansas, No. 67, entitled, "An act for the better protection and safety of the public," approved February 20, 1913, is not applicable to said crew, and the defendant is therefore not guilty of the offense charged in the information.

The court refused to find the law and facts as requested by defendant in its request numbered 8; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

9.

The court finds that the requirement of the Act of the General Assembly of the State of Arkansas, No. 67, entitled, "An act for the

better protection and safety of the public," and approved February 20, 1913, that no railroad company or corporation owning or operating any yards or terminals in the cities within the State, where switching, pushing, or transferring of cars are made across public crossings within the city limits of the cities, shall operate their switch crew, or crews, with less than one engineer, a fireman, a foreman and three helpers entails on defendant a large expense in paying extra employees for which it gets no corresponding return, and that there is no public necessity for said requirements, and said act therefore deprives defendant of its property without due process
 810 of law and is contrary to Section 1 of Article 14 of the Articles in Amendment of the Constitution of the United States, and is void.

The court refused to find the law and facts as requested by defendant in its request numbered 9; to which ruling of the court, the defendant, by its counsel, then and there duly excepted.

These were all the requests refused in the case.

These were all the requests in the case.

Verdict and Judgment.

The Court then rendered the following verdict and judgment:

811 *Judgment.*

No. 3043.

STATE OF ARKANSAS

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

On this day this cause came on to be heard at a regular day of the March Term 1914 of this Court, and comes the plaintiff, the State of Arkansas by Gibson Witt, Prosecuting Attorney and Jackson & Jones, its attorneys, and comes the defendant, the St. Louis, Iron Mountain & Southern Railway Company by its attorney, E. B. Kinsworthy. And the special plea heretofore filed by the defendant, is submitted to the Court for its consideration upon oral testimony taken before the court, and by consent of all parties, a jury is waived, and the plea of not guilty entered by the defendant was submitted to the court sitting as a jury, both propositions being submitted at the same time upon the same testimony, and admissions as shown by the record.

The Court after hearing all of the testimony, finds from the pleadings and the evidence herein, that the special plea of the defendant and each and every paragraph thereof is not well taken, and finds against the defendant on each and every paragraph of its special plea, to each and every finding the defendant at the time excepted. The Court also found the defendant guilty as charged in the information and assessed its fine at Fifty (\$50.00) Dollars.

It is therefore considered ordered and adjudged, that the plaintiff have and recover of and from the defendant the sum of \$50.00 and all its costs herein expended.

The defendant requested time in which to prepare and file its motion for a new trial, after the decision of the court, and
812 the court grants the defendant thirty days from this date to prepare and file its motion for a new trial.
April 8th, 1914.

Motion for New Trial.

Within the time allowed by the court, the defendant filed its motion for a new trial, which was in words and figures as follows, to-wit:

813 In the Garland Circuit Court.

STATE OF ARKANSAS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Defendant.

Motion for a New Trial.

Comes the defendant, the St. Louis, Iron Mountain & Southern Railway Company, by its attorneys, E. B. Kinsworthy, and moves the Court to set aside the verdict and finding of the Court herein and grant it a new trial, and for cause says:

First. Because the court erred in overruling and in refusing to sustain the demurrer filed by the defendant to the information in this case.

Second. Because the court erred in sustaining over the objection of the defendant the State's demurrer to the first count and the defense set up in defendant's special plea, in so far as it set up the defense that said train was at the time engaged in interstate commerce.

Third. Because the court erred in sustaining over the defendant's objection the State's demurrer to the second count and defense set up in defendant's special plea.

Fourth. Because the court erred in sustaining over defendant's objection the State's demurrer to the third count and de-
814 fense set up in defendant's special plea.

Fifth. Because the court erred in sustaining over defendant's objection the State's demurrer to the fourth count and defense set up in defendant's special plea.

Sixth. Because the court erred in refusing to allow witness J. W. Dean to answer the following question propounded by defendant's counsel:

"Q. If I understand, after the cars come into Argenta for these industries they would be hauled across the bridge, fifteen or twenty

cars, or more, at a time, and then they would be switched to the industries?"

Seventh. Because the court erred in refusing to allow witness J. W. Dean to answer the following question propounded by defendant's counsel;

"Q. Along any other industry track it would be the same thing, would it not?"

Eighth. Because the court erred in refusing to allow witness R. C. White to answer the following question propounded by defendant's counsel.

"Q. I will ask you—if you know—where there is an underground crossing, a viaduct, or a protected crossing, whether or not a great volume of trains pass across and over these crossings?"

Ninth. Because the court erred in refusing to allow witness R. C. White to answer the following question: (referring to where they would place a switchman at a crossing).

"Q. Well, also, that would have something to do to do
815 with the number of trains that would cross over the track or crossing—that would also have something to do with it, would it not?"

Tenth. Because the Court erred in refusing to allow the defendant to prove by witness B. W. Moore, on direct examination, the following facts:

"That Gurdon is not a city of the second class, but that it is a terminal and division point where the Womble and Pike City Branch and the Louisiana Division of the Iron Mountain make connection with the main line; that the switching done in Gurdon is done across public streets and in the main part of the town, and that the number of cars handled at Gurdon is far greater than the number handled at Hope; and that the work at Gurdon is done as well as it is at Hope and with as much safety to the public, and there they have only an engineer, a fireman, a foreman and two helpers with the switching crew."

Eleventh. Because the court erred in allowing counsel for the State to ask witness B. W. Moore, on cross-examination, the following question over the objection of defendant:

"Q. Did you ever see any cars over in Argenta kicked across a public crossing?"

Twelfth. Because the court erred in allowing counsel for the State to ask witness B. W. Moore, on cross-examination, the following question, and in permitting the witness to answer said question, over the objection of defendant:

"Q. Mr. Moore did you ever see cars kicked over a public crossing either in Argenta or Little Rock, or any other terminal?"

A. Yes, sir.

Thirteenth. Because the court erred in refusing to allow witness

816 H. B. Bray to answer the following question propounded by counsel for defendant: (Referring to the use of three men in the Little Rock yards of the Rock Island).

"Q. It don't increase the safety at all?"

Fourteenth. Because the court erred in refusing to allow witness

H. B. Bray to answer the following question propounded by counsel for defendant:

"Q. Would a third man increase the safety?"

Fifteenth. Because the court erred in allowing witness H. B. Bray to be asked on cross-examination each of the following questions, and in permitting the witness to answer each question, and in refusing to exclude each question and each answer:

"Q. Don't you think, Mr. Bray, if you had an increase of business on account of a fair, or otherwise, where more cars were brought in to be switched and put an extra burden on the switchmen at that particular time, you would need the third man?"

A. That would depend altogether on the amount of business there was to be handled at the place that required this increase.

Q. That would depend on the amount of business brought in on the special occasion?

A. That's it."

Sixteenth. Because the court erred in allowing witness S. H. Barnes to be asked the following question on cross-examination, over the objection of the defendant, and in permitting said witness to answer said question over the objection of the defendant, as follows:

"Q. Now if you have an occasion, such as a public fair, which would increase the business, of any kind—the amount of cars to be switched, wouldn't that have a bearing on the number of men with each crew?"

A. Not with the number of men, necessary, no."

817 Seventeenth. Because the Court erred in allowing witness W. C. Morse to be asked the following question on cross-examination, over the objection of defendant:

"Q. Now if you are pushing any considerable string of cars around one of the curves in Helena, where the buildings are jam up to the track, where you say probably—in some places, where you cannot see more than five or six car lengths, do you think that would require the third man?"

Eighteenth. Because the Court erred in refusing to allow the defendant to prove by witness J. D. Moore that the L. N. O. & T. Railway Company, at Helena, does the switching for the Y. & M. V. Railway Company, a railroad more than three hundred miles in length, and all of the switching for the Missouri & North Arkansas Railway Company coming into Helena; said railroad being over three hundred miles in length; and that on account of the length of the road—the L. N. O. & T. road not being fifty miles in length, it does not have to comply with the law and use the third helper, and it does not comply with the law and does not use the third helper; and that in proportion to the number of engines used by the L. N. O. & T. Railway Company, that it does as much switching in the town of Helena as the St. Louis, Iron Mountain & Southern Railway Company does, and switches across public crossings in the city of Helena.

Nineteenth. Because the court erred in refusing, over the objec-

tion of defendant, to allow witness O. C. Cornelson to answer the following question on direct examination:

"Q. Could you tell me the average number of freight cars handled by your switch engine at Fort Smith at a time or at each movement?"

818 Twentieth. Because the court erred in sustaining the objection of the State and in excluding the following question propounded by defendant's counsel on re-direct-examination, and in excluding the answer thereto:

"Q. Mr. Cornelson, I understand the more work you had the more men you would have to do the switching; you say during the cotton season you had two men at Ft. Smith, and during part of the year you only had one—I understand during the rush season you had two helpers.

A. One foreman and two helpers."

Twenty-first. Because the court erred in sustaining the State's motion to exclude the following testimony of J. H. Wright, over the objection of defendant:

"Q. How long is the Arkansas Central Railroad?

A. 46 Miles.

Q. From what place to what place does it run?

A. From Fort Smith to Paris in Logan County.

Q. Do you go into Fort Smith?

A. We go in over the Iron Mountain under trackage rights.

Q. You mean by trackage rights, you can have the right to run over the tracks of the Iron Mountain?

A. We lease these tracks and use them in common with the Iron Mountain, having the same rights over them as they do.

Q. Do you do switching in Fort Smith?

A. Yes, sir.

Q. Over what tracks do you switch in Fort Smith?

A. All of the tracks owned by the Iron Mountain.

Q. How much of a crew do you use in doing your switching?

A. We have two crews that switch there; one of them consists of an engineer, a fireman, a conductor and two brakemen; another consists of an engineer, a fireman, a conductor and one brakeman.

Q. And you switch over all the tracks that the Iron Mountain switches over?

A. Yes, sir, all of them.

Q. Now you say your switching crew is composed of an engineer, a fireman, a conductor and two brakemen?

819 A. Yes, sir.

Q. And the other is composed of an engineer, a fireman, a conductor and one brakeman?

A. Yes, sir, that is correct.

Q. Now all of these crews that do your switching there, do you have any trouble as to the safety of the public?

A. No, sir, we have never had an accident in the Fort Smith yards.

Q. Do you have any trouble as to the safety of your employees?

A. No, sir, none whatever.

Q. Are they sufficient to do you- work?

A. They do it easily.

Twenty-second. Because the Court erred in sustaining the State's motion to exclude the following testimony of J. H. Wright, over the objection of defendant:

"Q. Where you use five men, is that on passenger or freight trains?

A. That is the local freight train.

Q. The four men was used on what?

A. A passenger train. They become a switching crew as soon as they tie up as a passenger train.

Q. I don't understand?

A. I say they become a switching crew as soon as they tie up as a passenger train.

Q. Can you explain why it is necessary to have one more man on the freight than on the passenger?

A. Yes, the reason we have one more man on the freight is because we unload the local freight along the road and necessity requires more than one man to do that work?"

Twenty-third. Because the court erred in refusing to allow the defendant to prove by witness B. A. Porter, Superintendent of the L. N. O. & T. Ry. Co., that the L. N. O. & T. Ry. is less than five miles in length, that it is a terminal railway located at Helena, Arkansas, that this railroad does all the switching for the Missouri & North Arkansas Railroad at Helena, Arkansas, and that

820 the M. & N. A. Ry. is something over 300 miles long; that it also does the switching of all the cars for the Y. & M. V. Ry. coming into Helena; that the Y. & M. V. Ry. is 1,400 miles long; that they have two switch-engines in the City of Helena; that the engines switch and push cars over the various crossings in the City of Helena for the Y. & M. V. Ry. and the Missouri & North Arkansas Railway, and this road does not comply with the Act because it is less than one hundred miles in length, and in its switching crews they use an engineer, fireman, foreman and two helpers."

Twenty-fourth. Because the court erred in refusing to allow the defendant to prove by witness W. S. Cochran, conductor and train master for the Arkansas Central Railway Company, that the Arkansas Central Railway is 46 miles in length; that it runs from Paris, Arkansas, to Fort Smith, Arkansas; that it has no yards or terminals within the City of Fort Smith, but that it has a contract with the St. Louis, Iron Mountain & Southern Railway Company by which it uses all of the tracks and yards of said company in Fort Smith for the purpose of switching its cars over said tracks; and it does switch and push its cars over all the tracks belonging to the St. L. I. M. & So. Ry. Co., in the City of Fort Smith, and that in doing so it uses two engines; one of the engines has a crew of an engineer, a fireman, a foreman, and one helper; the other has an engineer, a fireman, a foreman and two helpers.

821 Twenty-fifth. Because the court erred in allowed the defendant to prove by witness J. W. Dean, General Superintendent for the St. Louis, Iron Mountain & Southern Railway Com-

pany, that he was familiar with the class of switching done in all yards in Arkansas, and that all switch-engines engaged in switching cars would be engaged in interstate commerce business.

Twenty-sixth. Because the court erred in sustaining the State's motion to strike out the testimony of witness G. H. Schweer as to the trains operated in the yards of the City of Hot Springs on the 17th day of June, 1913, being engaged in interstate commerce, as follows:

"Q. Take the date you have, June 17, 1913, I want to know whether the cars or trains that were switched here were engaged in interstate business, or not?

A. Yes, sir, I have a list here of the trains that came in here and freight trains. My first car here is merchandise, a car loaded in Little Rock, containing freight from various points, Chicago, St. Louis, Little Rock, Kansas City, etc. Now the next car here is a car of hay from Wagoner, Oklahoma; two cars of coal from Illinois; a car of produce from Little Rock. That was the train that came in that morning.

Q. Just have one freight train that day?

A. Yes, sir, and have one out.

Q. How many cars did you have in that freight train?

A. We had five cars.

Q. How many of them had interstate shipments in them?

A. Four, I think.

Q. You had one freight train out only that day?

A. Yes, sir.

Q. How many cars in it?

A. Four cars.

Q. How many of these cars contained interstate shipments?

A. Two I think, probably three. Here is one with merchandise to Little Rock; that probably had merchandise beyond. We usually load all merchandise in Little Rock cars.

822 Q. Then both the freight trains, one in and one out, were engaged in interstate commerce?

A. Yes.

Q. Take the passenger. You have how many passenger trains in?

A. Three in and three out.

Q. Were they all engaged in interstate commerce?

A. Yes, sir.

The Court: You don't have anything to do with passenger trains, do you?

A. Not particular.

Q. Now the two of those in, was one what was called the Hot Springs Special from St. Louis?

A. Yes, sir. Number 17.

Q. That comes from St. Louis here?

A. Yes, sir.

Q. Take the next number.

A. Number 18 going out.

Q. That goes from Hot Springs to St. Louis?

A. Yes, sir.

Q. Take the next one.

A. The next one is number 19.

Q. Where does that come from?

A. That came from Kansas City.

Q. To Hot Springs?

A. Yes, sir.

Q. Now what was that train going out?

A. Number 20.

Q. It goes back from Hot Springs to what point?

A. To Kansas City.

Q. Now the other trains?

A. They are Pine Bluff trains; one comes from Pine Bluff and the other goes out to Pine Bluff.

Q. What is the number?

A. 844 and 843.

Q. Do they make any connection with main line passenger trains at Benton?

A. Yes, sir.

Q. What connection do they make, if you know?

A. Well, I don't know what train they connect with, I think number 4. I am not certain about what trains, about what the numbers of the trains are.

Q. I understand they make connection at Benton with trains going to Texas and also to St. Louis?

A. Yes, sir.

Q. Do passengers travel on that train through Benton and make connection with these through trains?

A. Oh, yes, sir.

Q. Did the switching crew handle the freight trains, the cars you spoke of, on that day?

A. Yes, sir.

Q. What was the total number of cars including the passenger coaches switched in Hot Springs that day?

A. June 17th, fifty cars handled in and out.

823 Q. How many of these were passengers, I mean passenger trains?

A. Thirty-three.

Q. In other words, on that date the six passenger trains you speak of, or rather the three—there were thirty-three coaches in the passenger train?

A. Yes, sir, in and out.

Q. And seventeen freight trains?

A. Seventeen cars.

Q. I mean freight cars?

A. Yes, sir."

Twenty-seventh. Because the court erred in sustaining the State's motion to strike out all the testimony of witness G. H. Schweer as to the manner of handling passenger trains or coaches and the manner in which the switching of passenger trains is conducted in the City of Hot Springs, and as to the manner in which the switch-

ing of freight cars is conducted in the yards of Hot Springs and as to the number of men required to do this work, as follows:

"Q. Who gives the orders to the switching crew as to the cars that are to be switched?

A. I give them a switching list.

Q. In other words I understand that every day you give to the switching crew a list of cars that are to be switched in the yards in Hot Springs?

A. Yes.

Q. Have you a record that will show the number of cars as switched in Hot Springs, Arkansas, on the Iron Mountain switch engines on June 17, 1913?

A. Yes, sir, I have a list here of the cars that were handled in and out of the station, both passenger and freight cars.

Q. Now take the passenger first. How many passenger trains came in and out of Hot Springs on that date over the Iron Mountain."

A. There was three in and three out, passenger trains.

824 Q. What was the length of those trains?

A. Well I have here the list. There is four trains with six cars each, one train with five cars and one train with four cars.

Q. Now tell us please how these cars were switched when they came into Hot Springs?

A. Now the yard master takes these cars and pulls them around the Y and switches them back on the track at the shops. He handles them around on they Y; that is all the switching he does here.

Q. In other words as I understand the switch engine takes the entire train?

A. Yes, sir.

Q. When it comes in and takes it out on the Y, turns it around and heads it back the other way and then puts it down to the shops to be cleaned?

A. Yes.

Q. Then what does he do with it?

A. It is not handled any more except the train is put up at the passenger depot to move out.

Q. Does the switch engine put it up at the passenger depot?

A. Yes.

Q. Then when the time comes for this train to leave the switch engine takes it and puts it up at the passenger depot?

A. Yes, sir, about an hour and thirty minutes before it leaves.

Q. Then the regular engine is hooked onto it?

A. Yes, sir.

Q. Mr. Schweer, in handling these passenger trains, and switching them, you switch them as an entire train?

A. Yes, sir.

Q. And they are pulled over and across a crossing in a switch just as an entire — would be pulled?

A. Yes, sir, with the exception of the engines pushing trains you see; of course the flagman is on the hind end.

Q. That is the engine as I understand pushes the train instead of pulling it; that is the only difference?

A. Yes, sir.

Q. In that case the train is ahead of the engine?

A. Yes.

Q. You say the flagman is placed there?

A. The flagman is placed at the hind end on the rear platform.

Q. Has the company a signal or anything to notify?

A. They have a whistle there; one of those "turn around" whistles I believe they call it.

Q. Whistle for the crossing?

825

A. Yes.

Q. How many men compose a switching crew in Hot Springs?

A. Well there is a foreman and two switchmen and an engineer and fireman.

Q. How long has this switching crew been composed of an engineer, a fireman, a foreman and two helpers only?

A. Ever since I have been here, excepting probably during the Fair time we have an extra man.

Q. Except on special occasions?

A. Except on special occasions.

Q. I will ask you if there has ever been any trouble in this regular switching crew handling the work here at this place?

A. No, sir, we have had no trouble that I know of.

Q. Is that crew composed of an engineer, a fireman, foreman and two switching men, able to do the work here?

A. Yes, sir, in my opinion; they have been doing the work. Of course we have had a night switch engine on.

Q. But you have the same crew on that engine?

A. Have the same size crew.

Q. Now have you had any accidents at crossings with this switching crew?

A. I don't recall any.

Q. During the four years that you have been here you don't recall a single accident?

A. I don't recall an accident, no, sir.

Q. Now about handling the freight cars that come in here, please tell us how they are switched?

A. Well there are freight cars coming in here to be switched to the different industries in the city; possibly one industry has a car, they will be switched probably one car at a time or two cars or three.

Q. Suppose a train comes in here with fifteen or twenty cars to it, what is done to that train?

A. Well it is pulled in on what we call the Alley track, and then it is broken up with the switch.

Q. When you go to break up that train and place these cars, about how many cars does the switch engine handle at a time?

to a letter witness Mellard wrote to Mr. Mayne, superintendent at Little Rock.

Twenty-ninth. Because the court erred in permitting the State's counsel to ask witness Mellard each of the following questions over the objection of the defendant, and in permitting the witness to answer each of said questions over the objection of the defendant:

"Q. Did you ever, in the last three months, have a conversation with L. H. Tanner, night Yard Master at Argenta, relative to the rules of the Railway Company in doing switching in the yards?

A. I have had a conversation with both of our night yard masters, Mr. Tanner and Mr. Clary, in regard to violation of special instructions in dropping cars.

Q. Did you ever have any conversation with the night yard master, Mr. L. H. Tanner, relative to the manner in which you carry on switching in Argenta yards?

A. Yes, sir.

Q. What did Mr. Tanner tell you at the time?

A. He said I had been railroading long enough to know that we couldn't successfully run a railroad and live up to all the rules, and I ought to have better sense."

Thirtieth. Because the court erred in permitting the State's counsel to ask witness Mellard each of the following questions over the objection of the defendant, and in permitting the witness to answer each of the following questions over the objection of the defendant:

"Q. Have you, or have you not, observed other crews dropping cars over public crossings in Argenta and Little Rock?

829 A. Yes, every day.

Q. Tell the court, Mr. Mellard, how frequently is that occurrence?

A. It is a daily occurrence.

Thirty-first. Because the court erred in refusing to strike out the above testimony of witness Mellard contained in the above two questions and answers.

Thirty-second. Because the court erred in permitting the State's counsel to ask witness Mellard the following question, over the objection of the defendant, and in permitting said witness to answer same over the objection of defendant:

"Q. Have you or have you not observed them dropping cars across Main Street in Argenta in the last week, to keep from making a non-air?

A. Now I don't remember that exactly; I know they dropped it over there, I don't know why."

Thirty-third. Because the court erred in permitting the State's counsel to ask witness R. D. Carter each of the following questions over the objection of the defendant, and in permitting the witness to answer each of the said questions over the objection of the defendant:

"Q. Mr. Carter, I want to ask you: Have you ever, in the last three months or six months, made a request of any official, or Mr. Brown, to put down what is known as a cross-over track near Rock Street in East Little Rock yards, to keep from dropping cars there at the crossing?

A. Yes, I asked Mr. Brown to see if he couldn't put a cross-over switch there to save us from dropping cars over the crossing there.

Q. Did he comply with your request?

830 A. No, sir; he said it would take a considerable expense; said they would have to raise the main line on a level with the house lead."

Thirty-four. Because the Court erred in permitting the State's counsel to ask witness J. E. Phillips each of the following questions, over the objection of the defendant, and in permitting said witness to answer each of same, over the objection of the defendant:

"Q. Did you ever make a request of Yard Master Brown or Road Master Stople to put in a cross over track at Rock Street in Little Rock so as to make it unnecessary to perform, or to drop cars across the public crossing?

A. I didn't exactly make a request; I just mentioned it to them; told them it would be a good idea and would save dropping so many cars there.

Q. What answer did they give you?

A. The road master said it was not a level with Rock Street.

Q. Said what?

A. Said the main line was not on a level with the house lead and the main line would have to be raise- in order to get off the switch in Rock Street, for it to be done.

Q. Did they ever put it in?

A. No, sir."

Thirty-fifth. Because the court erred in refusing to find the law and facts as requested by defendant, in its request numbered 1.

Thirty-sixth. Because the court erred in refusing to find the law and facts as requested by defendant, in its request numbered 2.

831 Thirty-seventh. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 3.

Thirty-eighth. Because the court erred in refusing to find the law and the facts as requested by defendant in its request numbered 4.

Thirty-nine. Because the court erred in refusing to find the law and facts as requested by defendant, in its request numbered 5.

Fortieth. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 6.

Forty-first. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 7.

Forty-second. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 8.

Forty-third. Because the court erred in refusing to find the law and facts as requested by defendant in its request numbered 9.

Forty-fourth. Because the court erred, after hearing the evidence,

832 in finding against the defendant on the fifth count and defense set up in defendant's special plea.

Forty-fifth. Because the court erred, after hearing the evidence, in finding against the defendant on the sixth count and defense set up in defendant's special plea.

Forty-sixth. Because the court erred in finding against the defendant on each and every one of its defenses set up in its special plea.

Forty-seventh. Because the court erred in holding that the burden was on the defendant to sustain its defense under counts five and six of its defense set up in its special plea.

Forty-eighth. Because the finding and verdict of the court to the effect that the defendant was guilty of the charges set forth in the information in this case is contrary to the law.

Forty-ninth. Because the finding and verdict of the court to the effect that the defendant was guilty of the charges set forth in the information in this case is contrary to the evidence.

Fiftieth. Because the finding and verdict of the court to the effect that the defendant was guilty of the charges set forth in the information in this case is contrary to the law and the evidence.

833 Wherefore, the defendant prays that the verdict and *and* judgment rendered herein be set aside and that it be granted a new trial and for all other and proper relief as it may be entitled.

E. B. KINSWORTHY,

Attorney for Defendant.

Filed April 27, 1914.

834 *Motion for New Trial Overruled—Appeal Prayed and Granted.*

Which motion for a new trial coming on to be heard before the court and being submitted to the Court, the Court being well and sufficiently advised in the premises, after argument of counsel, doth overrule and deny said motion for a new trial, to which order and action of the Court in overruling and denying said motion for a new trial the defendant, the St. Louis, Iron Mountain & Southern Railway Company, by its counsel, then and there duly excepted.

And thereupon said defendant prayed an appeal to the Supreme Court in this cause, which prayer for appeal was by the Court granted; and time being asked, sixty days was by the Court granted the defendant from and after the 27th day of April, 1914, in which to prepare and file its bill of exceptions herein.

Now, therefore, within the time granted by the Court in which to prepare and file its bill of exceptions herein, comes the defendant, the St. Louis, Iron Mountain & Southern Railway Company, by its counsel, and presents to me, the undersigned, Judge of the 18th Judicial Circuit of Arkansas, this its bill of exceptions herein, which contains all the evidence offered, heard or submitted; all of the requests for special findings as to the law and facts offered and refused; all objections and exceptions to the evidence and to the findings of the Court; and all objections and exceptions to the refusal of the Court to grant

the requests of the defendant as to the law and the facts, the motion for a new trial, and all proceedings had and done in the trial of this cause; and the same, upon examination, being found in all things to be correct^m is by me approved and ordered filed as a part of the record in this cause.

Given under my hand this 15th day of May, 1914.

C. T. COTHAM,

Judge of the 18th Judicial Circuit of Arkansas.

This bill of exceptions filed in my office on this the 15th day of May, 1914.

A. G. SULLENBERGER,

*Clerk of the Circuit Court
of Garland County, Arkansas.*

O. K.

JACKSON & JONES.

GUS. W. JONES.

O. K.

E. B. KINSWORTHY.

836

Clerk's Certificate.

Certificate to Transcript.

STATE OF ARKANSAS,

County of Garland:

I, A. G. Sullenberger, Clerk of the Circuit and Chancery Courts, and Ex-Officio Recorder, within and for the County and State aforesaid, do hereby certify that the annexed and foregoing Eight Hundred and Forty-three (843) typewritten pages, contain a true, perfect and complete transcript of all pleadings, testimony, depositions, orders and judgments, of the Garland Circuit Court, in case wherein, the State of Arkansas, is plaintiff and the St. Louis, Iron Mountain and Southern Railway Co., as defendant, and as the same appears from the records of Garland Circuit Court, and on file in my said office.

In testimony whereof, I have hereunto set my hand and affixed my official seal at office in the City of Hot Springs, on this 21st day of May, 1914.

[SEAL.]

A. G. SULLENBERGER, *Clerk.*

837

Fee Bill.

Office of A. G. Sullenberger, Circuit Clerk.

Costs in Case of

STATE OF ARKANSAS

vs.

ST. LOUIS, IRON MOUNTAIN & So. Ry.

HOT SPRINGS, ARK., May 22nd, 1914.

To St. L., I. M. & S. Ry. Co., Dr.

Fine	\$50.00
Clerk's costs	16.75
Sheriff's "	5.20
Stenographer Tax	3.00
Prosecuting Attorney	10.00
Witnesses	221.30
	<hr/>
Transcript to Supreme Court 843 pages at .30	\$306.25
2 Certificates	252.90
70 Marginal entries and indexing at .10	1.00
	7.00
	<hr/>
	\$567.15

STATE OF ARKANSAS,

County of Garland:

I, A. G. Sullenberger, Clerk of the Circuit and Chancery Courts, and Ex-Officio Recorder within and for the County and State aforesaid, do hereby certify that the above statement of costs in the above entitled cause *are* just and true.

[SEAL.]

A. G. SULLENBERGER, *Clerk,*
By W. H. MOYSTON, *D. C.*

838

Filing in Supreme Court.

No. 1883.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,

Appellant,

vs.

THE STATE OF ARKANSAS, Appellee.

Garland.

Calvin T. Cotham, J.

Transcript. Filed, May 25, 1914.

P. D. ENGLISH, *Clerk,*
By W. P. SADLER, *D. C.*

839

Record Entries.

Be it remembered, that at a term of the Supreme Court of the State of Arkansas, begun and held at the Court House in the City of Little Rock, on the 25th day, being the fourth Monday of May, A. D. 1914, amongst others were the following proceedings, on the 1st day of June, A. D. 1914, a day of said term:

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

THE STATE OF ARKANSAS, Appellee.

Appeal from Garland Circuit Court.

On motion and for cause shown, this cause is continued by the Court until the reconvening of the Court after the summer recess.

And on the 21st day of September, A. D. 1914, the following proceedings were had in said cause: (Caption Omitted)

On motion and for cause shown this cause is passed by the Court until October 5th prox. for appellant's reply brief and submission.

840 And on the 5th day of October, A. D. 1914, the following proceedings were had in said cause: (Caption Omitted.)

This cause being regularly called, come the parties thereto by their attorneys, and said cause is submitted upon the transcript of the record and the briefs filed, and is by the Court taken under advisement.

And on the 19th day of October, A. D. 1914, the following proceedings were had in said cause: (Caption Omitted.)

This cause came on to be heard upon the transcript of the record of the Circuit Court of Garland County, and was argued by counsel, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said Circuit Court in this cause.

It is therefore considered by the Court that the judgment of said Circuit Court in this cause rendered be and the same is hereby in all things affirmed with costs.

It is further considered that said appellee recover of said appellant all her costs in this court in this cause expended and have execution thereof.

841 And on the 9th day of November, A. D. 1914, the following proceedings were had in said cause: (Caption Omitted.)

Comes the appellant by attorneys and files a motion to modify the opinion herein; and the same being duly served is now submitted and by the Court taken under advisement.

And on the 16th day of November, A. D. 1914, the following proceedings were had in said cause: (Caption omitted.)

Being fully advised, the motion of the appellant to amend the opinion handed down in this cause is by the Court overruled.

And on December 7th, A. D. 1914, the following proceedings were had in said cause: (Caption Omitted.)

On motion of the appellant, it is ordered by the Court that the Clerk certify up with the transcript of the record in this cause to the Supreme Court of the United States, the original maps or plats filed by the appellant as exhibits to the transcript in this Court.

842 And on the 14th day of December, the following proceedings were had in said cause (caption omitted):

Come the parties by their attorneys and file a stipulation whereby it is agreed that the record herein be amended as of the date of submission of the above cause, to-wit: the 5th day of October, 1914, so as to show that the judgment in the Garland Circuit Court, of date of April 8th, 1914, which is copied in the bill of exceptions and appears on page 819 of the transcript, is the judgment of the Garland Circuit Court herein appealed from, and pray that the record be amended.

The Court having said stipulation under advisement, finds that the clerk of the circuit court of Garland County, by misprision, incorporated the judgment aforesaid, in copy of the bill of exceptions, instead of bringing the same into the copy of the record proper.

Being fully advised, the prayer to amend is by the Court sustained, and it is, therefore ordered by the Court that the record herein be amended as of date October 5, 1914, at the time of submission of this cause, so as to withdraw the copy of the judgment aforesaid and incorporate the same in, and as a part of, the record proper.

843

Opinion.

In the Supreme Court of Arkansas, October 19, 1914.

No. 172.

St. L., I. M. & S. R. Co.

v.

STATE.

McCulloch, C. J.:

Appellant railway company was convicted of violating the statute (Act of Feb. 20, 1913) which requires all railway companies operating roads one hundred miles and over in length to use crews of six men composed of an engineer, a fireman, a foreman and three helpers, while doing switching in terminals or yards in cities of the first and second class. The act contains four sections and reads as follows:

"An Act for the better protection and safety of the public.

"Section 1. That no railroad company or corporation owning or operating any yards or terminals in the cities within this State, where switching, pushing or transferring of cars are made across public crossings within the city limits of the cities, shall operate their switch crew or crews with less than one engineer, a fireman, a foreman and three helpers.

"Sec. 2. It being the purpose of this act to require all railroad companies or corporations who operate any yards or terminals within this State who do switching, pushing or transferring of cars across public crossings within the city limits of the cities to operate said switch crew or crews with not less than one engineer, a fireman, a foreman and three helpers, but nothing in this act shall be so construed as to prevent any railroad company or corporation from adding to or increasing their switch crew or crews beyond the number set out in this act.

"Sec. 3. The provisions of this act shall only apply to cities of the first and second class, and shall not apply to railroad companies or corporations operating railroads less than one hundred miles in length.

"Sec. 4. Any railroad company or corporation violating the provisions of this act shall be fined for each separate offense not less than fifty dollars, and each crew so illegally operated shall constitute a separate offense."

844 Appellant violated the terms of the statute for a day in switching cars in the City of Hot Springs, and on the trial of the case the court imposed the minimum fine. It is conceded that the terms of the act were violated, but appellant challenges its constitutionality on four grounds, namely, that the provision with reference to the length of miles of road within the reach of the statute constitutes an unjust classification and in effect denies the equal protection of the laws to railroads one hundred miles in length; that the statute is arbitrary and unreasonable as a police regulation in requiring the specified number of employees without necessity therefor; that the act operates as an interference with interstate commerce; and lastly, that the penalty imposed is so excessive that it in effect deprives the company of the opportunity to contest its validity without subjecting itself to unreasonable penalties.

The court heard the testimony of a large number of witnesses introduced by the respective parties to the litigation, and there is a wide conflict in the testimony as to whether there is any real necessity for requiring more than two helpers. The witnesses introduced by appellant are its officers and employees, and those of other roads, all of them being men of wide experience in switching cars in terminals; they all testified that there was absolutely no reason for requiring more than five men in the switch crew, and that switching could be more speedily and safely done with five men than with six. On the other hand, the State introduced a number of men now engaged as switchmen in yards and they all testified that it is necessary, in order to give proper protection at crossings, to have the additional man. It is unnecessary for a statement of the conclusions as to the validity of the law to state where the preponderance of the

testimony lies, it being sufficient to say that it fails to show that the legislature had no grounds for adopting this requirement and enacting it into a statute. There appears to be some grounds for requiring the extra man in the crew to protect the public at crossings, and the requirement is not arbitrary; therefore it is our duty to

845 accept the determination of the lawmakers as to the policy and expediency of the statute. The testimony in the case is very voluminous, but an analysis of it would serve no useful purpose; and, notwithstanding the elaborate argument made by counsel on both sides of the case, we deem it sufficient to say that every point raised is decided adversely to appellant's contention by this court, and the Supreme Court of the United States, in the case of *C. R. I. & P. Ry. Co. v. State*, 86 Ark. 412, and 219 U. S. 453. The case cited involved the constitutionality of the statute requiring railway companies, whose line or lines are fifty miles or more in length, to equip freight trains consisting of twenty-five cars or more, with crews composed of an engineer, a fireman, a conductor and three brakemen. There was in that case, as in this, a wide conflict in the testimony as to the necessity for and justice of such law; but both this court and the Supreme Court of the United States held in effect that the lawmakers were the judges of the policy and expediency and necessity for the law, it not being shown that it was entirely arbitrary and without foundation. The proof in the present case varies from that in the other case only in degree, and to hold that this act is invalid would be a distinct departure from the principles announced in the former case.

Learned counsel for appellant contend that the only reason stated by the State's witnesses why the provisions of the statute are necessary is that flying or drop switches at crossings cannot be safely made without the assistance of the third helper, and that this reason is unsound because the evidence adduced by appellant shows that such method of switching at crossings is expressly forbidden by the rules of the companies. Conceding that this is the only reason stated by the witnesses, it does not follow that the existence of the rules of the companies forbidding such methods of switching obviates the necessity for requiring the employment of the third helper. There is testimony tending to show that the rule is habitually violated, with the knowledge of the superior officers of the railway companies, and the lawmakers had the right to take those facts into consideration in legislating for the protection of the public or even for the protection of employees who were permitted to habitually violate the rules. Questions of assumed risk and contributory negligence do not necessarily enter into the consideration of questions of expediency in enacting statutes for the protection of human life. The lawmakers can disregard those questions entirely and, as a police regulation, prescribe specific acts of care to be observed for the safety of employees or of the public.

846 It is insisted that the classification upheld in the former case does not justify the classification prescribed in the present act for the reason that the conditions are different, the former being a classification with respect to crews of trains while operating out on the

road, whereas the present statute only applies to switching in the yards or terminals. We are of the opinion that the reason found in the other case for that classification applies with equal force to the present case, for it may be seen that there is more work demanded in switching cars on a road many miles in length, where the trains are run more frequently and consist of more cars, than on a short line doing perhaps only a local business.

Attention is called to one or more situations in the state which show the unreasonableness of the classification by reason of the fact that, on account of the peculiar conditions, short roads do as much switching as longer ones. The principal instance cited is at Helena, where a road only a few miles in length, located entirely within the corporate limits of the City of Helena, does a large amount of switching for connecting trunk lines. The validity of the statute cannot be thus tested by exceptional cases, for the lawmakers are presumed to legislate with reference to general conditions and not to exceptional cases, and this, they have the power to do.

"It is almost impossible, in some matters, to foresee and provide for every imaginable and exceptional case," said the Supreme Court of the United States, in the case of *Ozan Lumber Co. v. Union County National Bank*, 207 U. S. 251, "and the Legislature ought not to be required to do so at the risk of having its legislation declared void, although appropriate and proper upon the general subject upon which such legislation is to act, so long as there is no substantial and fair ground to say that the statute makes an unreasonable and unfounded general classification, and thereby denies to any person the equal protection of the laws. In a classification for governmental purposes, there cannot be an exact exclusion or inclusion of persons and things."

In view of the elaborate discussion of the questions by this court, and by the Supreme Court of the United States, in the case which we have referred to as decisive of all the questions involved, a further discussion is unnecessary at this time. We find that appellant's attack upon the validity of the act is unfounded.

The judgment is therefore affirmed.

848

Certificate.

SUPREME COURT,

State of Arkansas, ss:

I, P. D. English, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of the St. Louis, Iron Mountain & Southern Railway Company, a corporation, Appellant, vs. The State of Arkansas, Appellee, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in Little Rock, Arkansas, this — day of December, 1914.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

849

In the Supreme Court of Arkansas.

Number 1883.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

STATE OF ARKANSAS, Appellee.

Assignment of Errors.

Now comes the above appellant and files a petition for a writ of error and says that there are errors in the record and proceedings in the above entitled cause and for the purpose of having the same reviewed in the Supreme Court of the United States makes the following assignment:

The Supreme Court of Arkansas erred in holding and deciding that the Act of February 20th, 1913, of the Legislature of Arkansas, entitled "An Act for the Better Protection and Safety of the Public" is valid. The validity of the Act was denied and drawn in question by the appellant on the ground of being repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set out as follows:

The Supreme Court of Arkansas erred in holding and deciding:

First. That said Act of February 20th, 1913, of the Legislature of Arkansas, does not deny equal protection to railroads one hundred miles in length or longer, in violation of the Fourteenth Amendment to the Constitution of the United States.

850 Second. That the said Act of February 20, 1913, of the Legislature of Arkansas, is not unreasonable and arbitrary in requiring the specified number of employees without necessity therefor, and is not repugnant to the due process of law and equal protection clauses of the 14th Amendment to the Constitution of the United States.

Third. In holding that the Act of February 20th, 1913, of the Legislature of Arkansas, does not operate as an interference with interstate commerce, in violation of Section 8 of Act 1, of the Constitution of the United States.

Fourth. In holding that the penalty imposed by the said Act of February 20th, 1913, is not so excessive that it in effect deprives the railroad company of the opportunity to contest its validity without subjecting themselves to unreasonable penalties, and is not repugnant to the due process of law and equal protection clauses of the 14th Amendment to the Constitution of the United States.

For which errors the appellant, the St. Louis, Iron Mountain and Southern Railway Company, prays that the said judgment of the Supreme Court of Arkansas, dated October 14th, 1914, be reversed and a judgment rendered in favor of the appellant company and for costs.

T. D. CRAWFORD,

Attorney for Appellant.

Filed Dec. 10, 1914. Peyton D. English, Clerk.

851

In the Supreme Court of Arkansas.

No. 1883.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

STATE OF ARKANSAS, Appellee.

Petition for Writ of Error.

Considering itself aggrieved by the final decision of the Supreme Court of Arkansas in rendering judgment against it in the above entitled cause the appellant, the St. Louis, Iron Mountain & Southern Railway Company, hereby prays a writ of error from said decision and judgment to the Supreme Court of the United States, and an order fixing the amount of its supersedeas bond.

Assignment of errors herewith.

T. D. CRAWFORD,
*Attorney for Appellant.*STATE OF ARKANSAS,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by the St. Louis, Iron Mountain & Southern Railway Company to the State of Arkansas, in the sum of Five hundred Dollars; such bond when approved to act as a supersedeas.

Dated November 20, 1914.

E. A. McCULLOCH,
Chief Justice Supreme Court of Arkansas.

Filed Dec. 10/1914. Peyton D. English, Clerk.

852

In the Supreme Court of Arkansas.

No. 1883.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

STATE OF ARKANSAS, Appellee.

Bond.

Know all men by these presents; that we, St. Louis, Iron Mountain and Southern Railway Company, as principal, and Chas. L. Thompson and Gordon N. Peay, as sureties, are held and firmly bound unto the State of Arkansas in the sum of Five Hundred Dollars, to be paid to the said State, to which payment, well and

truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals, and dated this the 21st day of November, 1914.

Whereas, the above named appellant seeks to prosecute its writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of Arkansas.

Now, therefore, the condition of this obligation is such, that if the above named Appellant shall prosecute its said writ of error to effect, and answer all costs and damages that may be adjudged if it fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

ST. LOUIS, IRON MOUNTAIN AND
SOUTHERN RAILWAY CO.,

By E. B. KINSWORTHY, *Principal,*
General Attorney.
CHAS. L. THOMPSON,
GORDON N. PEAY,
Sureties.

Attest:

H. J. DENTON.

853 STATE OF ARKANSAS,
County of Pulaski, ss:

Chas. L. Thompson and Gordon N. Peay, being each duly sworn, on oath depose and say: We are each of lawful age and are citizens of the State of Arkansas, and know the contents of the foregoing instrument to which we have attached our names. We each for himself say we are worth the sum of five hundred Dollars over and above all debts, liabilities and exemptions.

CHAS. L. THOMPSON.
GORDON N. PEAY.

Subscribed to and sworn to before me this the 21 day of November, 1914.

[Seal of H. J. Denton, Notary Public, Pulaski Co., Ark.]

H. J. DENTON,
Notary Public.

My commission expires November 7, 1918.

Bond approved and to operate as a supersedeas.
Dated November 21, 1914.

E. A. McCULLOCH,
Chief Justice Supreme Court of Arkansas.

Filed Dec. 10, 1914. Peyton D. English, Clerk.

854

In the Supreme Court of Arkansas.

No. 1883.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

STATE OF ARKANSAS, Appellee.

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the State in which a decision could be had in a suit between the State of Arkansas and the St. Louis, Iron Mountain and Southern Railway Company, wherein was drawn in question the validity of the Act of February 20th, 1913, of the Legislature of Arkansas, same being an Act entitled "An Act for the Better Protection and Safety of the Public," or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of the validity thereof; or wherein was drawn in question the construction of a clause of the Constitution, or statute of, or commission held under the United States, and the decision was
855 against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, statute or commission; a manifest error hath happened, to the great damage of the said St. Louis, Iron Mountain & Southern Railway Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 21 day of November, 1914, A. D.

[SEAL.]

SID B. REDDING,

*Clerk of the District Court of the Western Division**of the Eastern District of Arkansas,*

By W. P. FEILD, JR., D. C.

Allowed November 21 1914.

E. A. McCULLOCH,

Chief Justice Supreme Court of Arkansas.

Filed Dec. 10, 1914. Peyton D. English, Clerk.

856

Certificate of Lodgement.

SUPREME COURT, STATE OF ARKANSAS, ss:

I, P. D. English, clerk of the said court, do hereby certify that there was lodged with me as such clerk on November 21, 1914, in the matter of the St. Louis, Iron Mountain & Southern Railway Company, a corporation, versus The State of Arkansas,

1. The original bond of which a copy is herein set forth.

2. Three copies of the writ of error, as herein set forth—one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this — day of December, 1914.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,

Clerk Supreme Court of Arkansas.

857

In the Supreme Court of Arkansas.

No. 1883.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,

vs.

STATE OF ARKANSAS, Appellee.

Citation.

The President of the United States to the State of Arkansas, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Arkansas wherein the St. Louis, Iron Mountain & Southern Railway Company is appellant and you are appellee, to show cause, if any there be, why the judgment entered against said appellant, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of Arkansas, this 21 day of November, 1914.

E. A. McCULLOCH,

Chief Justice Supreme Court of Arkansas.

Attest:

PEYTON D. ENGLISH,

Clerk Supreme Court of Arkansas.

LITTLE ROCK, ARK., November 9th, 1914.

I, William L. Moose, Attorney General of the State of Arkansas, appellee in the above entitled cause, hereby acknowledge due service of the above citation and enter an appearance in the Supreme Court of the United States.

WM. L. MOOSE,
Attorney General, State of Arkansas.

Filed 10th December, 1914. Peyton D. English, Clerk.

858

Return to Writ.

UNITED STATES OF AMERICA,
Supreme Court of Arkansas, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, this December 10th, 1914.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

Costs of Suit.

Costs in Circuit Court.....	\$306.25
“ Supreme Court	\$275.90
“ Transcript to U. S. Sup. Court & clerk's fees....	250.00/100

Attest: P. D. ENGLISH, *Clerk.*

859

In the Supreme Court of the United States.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY
vs.
STATE OF ARKANSAS.

Stipulation as to Printing Record.

It is agreed that the blue prints filed with the transcript herein, and bound separately from the rest of the transcript, need not be printed.

It is agreed that, if either party hereafter shall desire it, the plaintiff in error shall print all or any part of said blue prints.

E. B. KINSWORTHY,
Attorney for Plaintiff in Error.
WM. L. MOOSE, *Att'y General,*
Attorney for Defendant in Error.

[Endorsed:] 727/24,471.

860 [Endorsed:] File No. 24,471. Supreme Court U. S., October term, 1914. Term No. 727. St. Louis, Iron Mountain & Southern Railway Company vs. The State of Arkansas. Stipulation to omit blue-prints in printing record. Filed December 26, 1914.

801 Peyton D. English, Clerk; Wm. P. Sadler, Deputy; James H. Campbell, Deputy; Carl R. Stevenson, Ass't Deputy.

Edgar A. McCulloch, Chief Justice; Carroll D. Wood, Jesse C. Hart, William F. Kirby, Frank G. Smith, Judges; James V. Johnson, Reporter.

Supreme Court of the State of Arkansas, Little Rock.

STATE OF ARKANSAS,

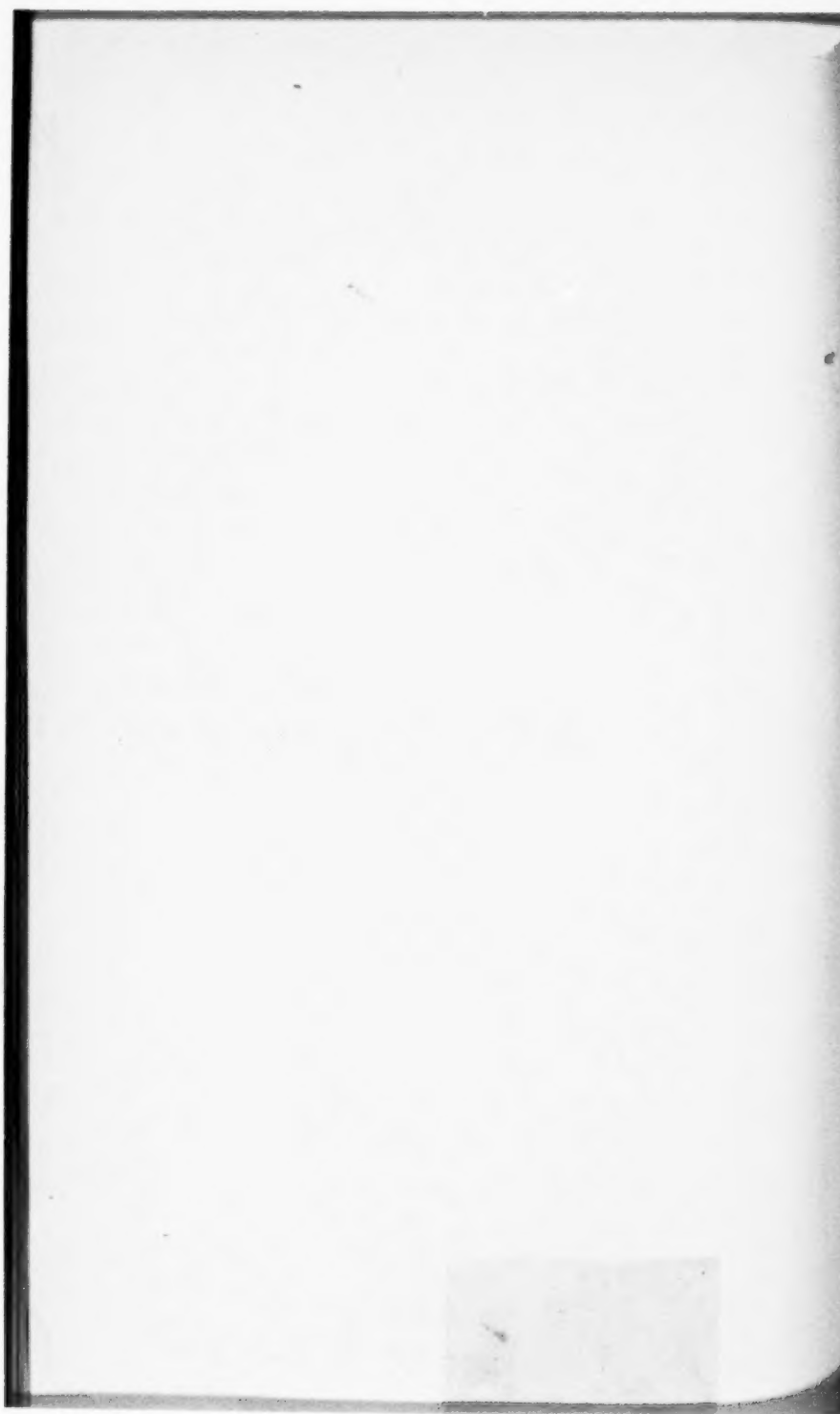
In the Supreme Court, ss:

I, P. D. English, Clerk of the Supreme Court of Arkansas, do certify that the attached blue prints, maps or plats, contained in "Vol. 2" of transcript numbered 1883, are the original blue prints, maps or plats filed as exhibits to and as a part of the transcript by the appellant in the cause late pending in said Supreme Court wherein St. Louis, Iron Mountain & Southern Railway Company was appellant, and The State of Arkansas was appellee.

In testimony whereof, I hereunto set my — as such clerk, and affix the seal of said Supreme Court, this 10th day of December, A. D. 1914.

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

Endorsed on cover: File No. 24,471. Arkansas Supreme Court. Term No. 302. St. Louis, Iron Mountain & Southern Railway Company, plaintiff in error, vs. The State of Arkansas. Filed December 17th, 1914. File No. 24,471.



FILED
FEB 21 1916

IN THE

Supreme Court of the United States

October Term, 1915.

No. 302.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY, PLAINTIFF IN ERROR.

THE STATE OF ARKANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE
OF ARKANSAS.

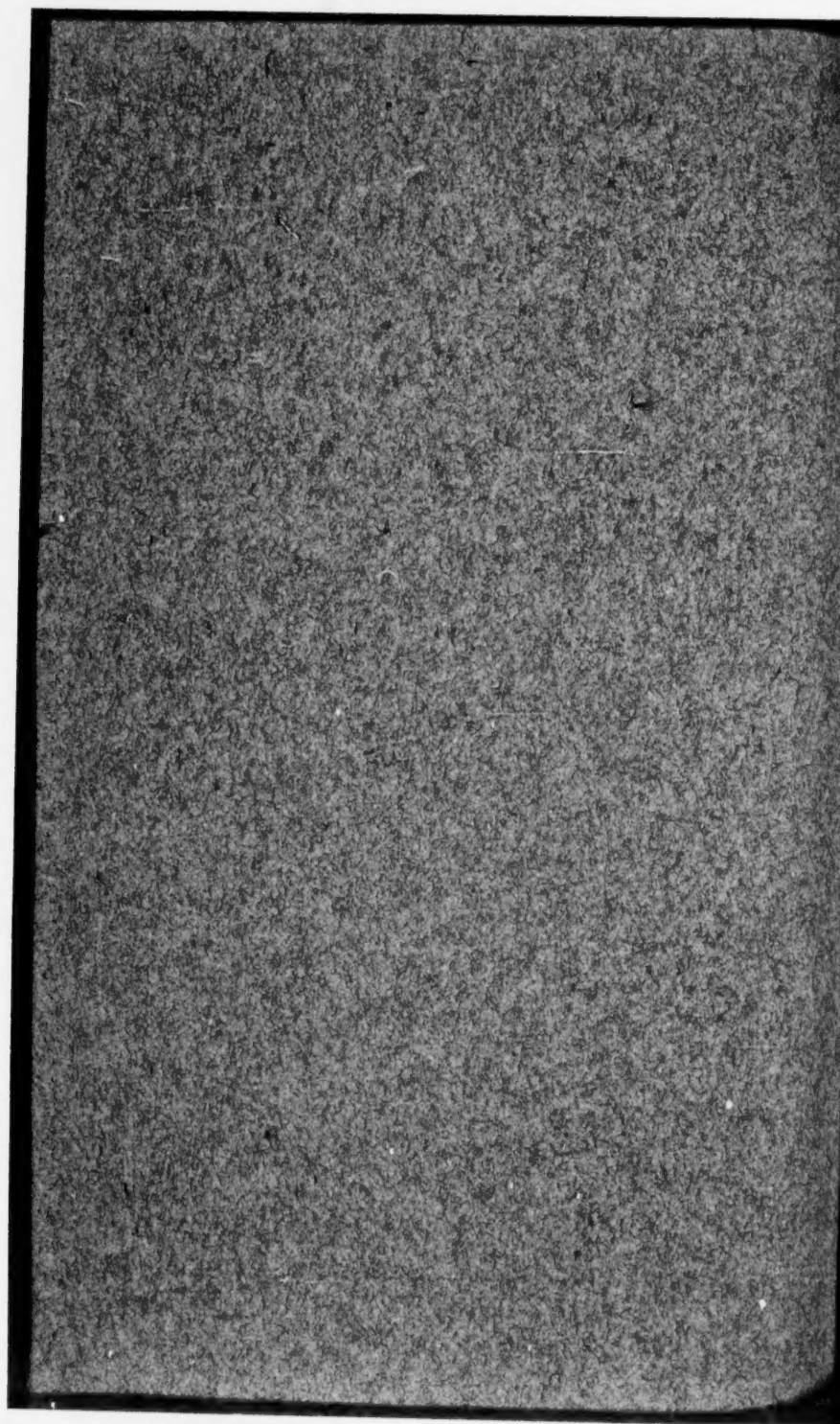
BRIEF FOR PLAINTIFF IN ERROR.

EDWARD J. WHITE,

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IN THE
Supreme Court of the United States

October Term, 1915.

No. 302.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY, PLAINTIFF IN ERROR.

v.

THE STATE OF ARKANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE
OF ARKANSAS.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

On February 20, 1913, the Legislature of Arkansas passed its Act No. 67, entitled, "An Act For the Better Protection and Safety of the Public," and reading as follows:

Section 1. That no railroad company or corporation owning or operating any yards or terminals in cities within the State, where switching, pushing or transferring of cars are made across public crossings within the city limits of the cities, shall operate their switch crew or crews with less than one engineer, a fireman, a foreman and three helpers.

Sec. 2. It being the purpose of this act to require all railroad companies or corporations who operate any yards or terminals within this State who do switching, pushing or transferring of cars across public crossings within the city limits of cities to operate said switch crew or crews with not less than one engineer, a fireman, a foreman, and three helpers, but nothing in this act shall be construed as to prevent any railroad company or corporation from adding to or increasing their switch crew or crews beyond the number set out in this act.

Sec. 3. The provisions of this act shall apply only to cities of the first and second class, and shall not apply to the railroad companies or corporations less than one hundred miles in length.

Sec. 4. Any railroad company or corporation violating the provisions of this act shall be fined for each separate offense not less than fifty dollars, and each crew so illegally operated shall constitute a separate offense.

Sec. 5. This act shall take effect and be in force after May 1, 1913.

On October 14, 1913, the State of Arkansas, through its prosecuting attorney, brought a suit against the plaintiff in error, alleging a violation of the foregoing act in its switching operations in the city of Hot Springs, Arkansas, by failing to employ three helpers, as required by the act.

The plaintiff in error filed a demurrer and special plea in said suit, alleging in both that the act was contrary to the Constitution, and to the law of the United States, and therefore void (Tr. 5, 6). The points raised in the demurrer and

special plea of the plaintiff in error were the same. The material paragraphs of the special plea are set out below:

1. Defendant states that said train at the time was engaged in interstate commerce, and defendant denies that it violated Act No. 67 of the General Assembly of the State of Arkansas, approved February 20, 1913, and denies that such act was applicable to the above switch crew.

2. For further defense, defendant alleges that said act is unconstitutional, because section 3 thereof exempts from its application all railroad companies operating railroads less than 100 miles in length. Defendant alleges that there are several railroad companies in this State operating railroads less than 100 miles in length, which do switching of cars across public roads within the State. Defendant alleges that said act is unconstitutional and in conflict with section 1 of the Fourteenth Amendment of the Constitution of the United States, in depriving this defendant of the equal protection of the law.

3. Defendant alleges that section 4 of said act is void in that it imposes a penalty of not less than \$50 for each separate offense, but imposes no maximum penalty, the effect being to render the defendant liable to excessive fines within the prohibition of section 9, of article 2, of the Constitution of Arkansas, prohibiting the imposition of cruel and unusual punishment.

4. Defendant alleges that said act is void in imposing an unreasonable burden upon this defendant in violation of section 1, of the Fourteenth Amendment of the Constitution of the United States, which provides that no State shall deprive any person of property without due process, nor deny

to any person within its jurisdiction the equal protection of the law, and that under the provisions of said act, this defendant is only allowed a hearing upon the question of alleged violations of the statute at the risk, if mistaken, of being subjected to such enormous penalties as to result in the confiscation of its entire property, and so excessive and enormous as to, in effect, prohibit this defendant from seeking judicial determination of matters which deeply affect its rights and property, all in violation of section 1, of article 14, of the articles in amendment of the Constitution of the United States.

5. The defendant alleges that said act imposes an unnecessary and unreasonable burden on the defendant, and deprives it of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law.

6. Defendant alleges that under ordinary circumstances, two switchmen, in addition to a foreman, an engineer and a fireman, are amply sufficient to do the required switching in cities of the first and second class with promptness, safety and efficiency. That the employment of an extra switchman, as required by this act, imposes an unnecessary burden upon this defendant from which it receives no benefit whatever; that such requirement will add an expense of approximately eight thousand dollars per month to defendant's pay roll; that said act is void as depriving the defendant of its property without due process of law, and as denying it the equal protection of the law.

3. The plaintiff in error also entered a plea of not guilty (Tr. 30). The demurrer of the plaintiff in error was overruled (Tr. 22). The State of Arkansas filed a demurrer to the paragraphs of the special plea of plaintiff in error numbered 1, 2, 3 and 4 (Tr. 29), which the court sustained as to paragraphs 2, 3 and 4, and to paragraph 1 in so far as it set up the defense that the train was at the time engaged in interstate commerce (Tr. 30).

A trial of the cause was had upon paragraphs 5 and 6, and that part of paragraph 1 upheld by the court. There was a judgment rendered against the plaintiff in error which was affirmed by the Supreme Court of the State of Arkansas on appeal to that court.

We have printed as an appendix to this brief an abstract of all the testimony offered on behalf of either party to this cause in the trial court, to which we call the court's attention in the belief that it may be of material service in presenting the material facts without the unavoidable and tedious repetition of the printed record.

SPECIFICATION OF ERRORS.

1. The Supreme Court of Arkansas erred in holding and deciding that the act of February 20, 1913, of the Legislature of Arkansas, entitled, "An Act for the Better Protection and Safety of the Public," is valid. The validity of the act was denied and drawn in question by the appellant on the ground of being repugnant to the Constitution of the United States, and in contravention thereof.

2. The Supreme Court of Arkansas erred in holding and deciding that said act of February 20, 1913, of the Legislature of Arkansas does not deny equal protection of the laws to railroads one hundred miles in length and longer in violation of the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of Arkansas erred in holding and deciding that the said act of February 20, 1913, of the Legislature of Arkansas is not unreasonable and arbitrary in requiring the specified number of employees without necessity therefor, and is not repugnant to the due process of law and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The Supreme Court of Arkansas erred in holding and deciding that the act of February 20, 1913, of the Legislature of Arkansas, does not operate as an interference with interstate commerce in violation of section 8 of article 1, of the Constitution of the United States.

5. That the Supreme Court of Arkansas erred in holding and deciding that the penalty imposed by said act of February 20, 1913, is not so excessive that it in effect deprives the railroad company of the opportunity to contest its validity without subjecting itself to unreasonable penalties, and is not repugnant to the due process of law and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

POINTS AND AUTHORITIES.

I.

ACT No. 67 OF THE GENERAL ASSEMBLY OF ARKANSAS, APPROVED FEBRUARY 20, 1913, IS DISCRIMINATORY, AND DENIES TO PLAINTIFF IN ERROR THE EQUAL PROTECTION OF THE LAWS, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Soon Hing v. Crowley, 113 U. S. 709.

Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 150, 41 L. Ed. 666.

Yick Wo v. Hopkins, 118 U. S. 350-359.

Southern R. Co. v. Green, 216 U. S. 400, 54 L. Ed. 536.

Conway v. Union Sewer Pipe Co., 184 U. S. 540, 46 L. Ed. 679.

Sutherland on Statutory Construction (2 ed.), vol. 1, p. 366.

Cotting v. K. C. Stock Yards Co., 183 U. S. 79, 46 L. Ed. 92.

II.

ACT No. 67 OF THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS IS ARBITRARY AND UNREASONABLE AND REPUGNANT TO THE DUE PROCESS CLAUSE OF SECTION 1 OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

Adair v. U. S., 208 U. S. 161, 52 L. Ed. 436.

Magler v. Kansas, 123 U. S. 623, 31 L. Ed. 205.

C. M. & St. P. R. Co. v. Tompkins, 176 U. S. 167, 44 L. Ed. 417.

Mo. Pac. R. Co. v. Nebraska, 217 U. S. 196, 54 L. Ed. 727.

Washington v. Faichild, 224 U. S. 510, 56 L. Ed. 863.

L. & A. R. Co. v. State, 85 Ark. 12; 106 S. W. 960.

ARGUMENT.

I.

ACT No. 67 OF THE GENERAL ASSEMBLY OF ARKANSAS, APPROVED FEBRUARY 20, 1913, IS DISCRIMINATORY AND DENIES TO PLAINTIFF IN ERROR THE EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The above mentioned statute is entitled "For the Better Protection and Safety of the Public." It provides that all railroad companies operating switch crews in cities of the first and second class in the State of Arkansas, must, where cars are switched over public crossings within the limits of said cities, employ in said crews an engineer, fireman, foreman and three helpers. In other words the law calls for a switch crew composed of six men. The third section of the act provides that it shall not apply to roads less than one hundred miles in length. We shall endeavor to show that the classification attempted to be made by the act has no reasonable basis in the case of this particular statute, realizing that classification of railroads according to length is justified in a proper case.

In *Soon Hing v. Crowley*, 113 U. S. 709, it is said: "The discriminations which are open to objection, are those where persons engaged in the same business are subject to different restrictions, or held entitled to different privileges under the same conditions."

And in *Gulf, C. & S. F. R. Co. v. Ellis*, 165 U. S. 150, the court, at page 159, said:

“Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences that would serve for classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation are such as, in the nature of things, furnish a reasonable basis for separate laws and regulations.” And again in the course of the same opinion, the court used this notable language: “Arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this court in *Yick Wo v. Hopkins*, 118 U. S. 356-359: ‘When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.’ The first official action of this nation declared the foundation of Government in these words: ‘We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.’ While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty, and while in all cases reference must be had to organic law of the nation for such limits, yet the lat-

ter is but the body, and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

And, further: "It is apparent that the mere fact of classification is not sufficient to relieve the statute from reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that the classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

In the case of *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283 (42 L. Ed. 1037), it was said that the equal protection clause of the Fourteenth Amendment of the Constitution of the United States requires that all persons subject to such legislation shall be treated alike under like circumstances and conditions both in privileges conferred and in liabilities imposed.

"While reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification can not be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, can not be justified by calling it classification."

In *Southern R. Co. v. Greene*, 54 L. Ed. 536, this court said: "The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation. * * * Every person is entitled to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon, other persons in a like situation."

"In the case of *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 22 S. Ct. 431, 46 U. S. (L. Ed.) 679, in which a statute of the State of Illinois was held to be a denial of the equal protection of the laws, on account of arbitrary classification, it is said:

"The difficulty is not met by saying that, generally speaking, the State, when enacting laws, may in its discretion make a classification of persons, firms, corporations and associations, in order to subserve public objects. For this court has held that classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without such basis. * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that the classification has been made, but also that it is one based upon some good, reasonable ground, some difference which bears a just

and proper relation to the attempted classification, and is not a mere arbitrary selection."

"In *Sutherland on Statutory Construction* (2 ed., by Lewis), vol. 1, p. 366, it is said: "The fundamental rule is that all classification must be based upon substantial distinctions which make one class really different from another; and the characteristics which form the basis of the classification must be germane to the purpose of the law; in other words, legislation for a class, to be general, must be confined to matter peculiar to the class."

And, at page 369: "The characteristics, which will thus serve as a basis of classification, must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation."

In *Cotting v. K. C. Stock Yards Co.*, 183 U. S. 79, the court held that a stock yards company is denied the equal protection of the laws by Kansas act March 3, 1897, which limits the charge which is to be made by that corporation, without limiting the charges to be made by other similar corporations doing a smaller amount of business, and without any reference to the character or value of the services rendered, although the statute is general in its terms, and is made applicable to any corporation doing business of a certain amount, and notwithstanding the fact that, by virtue of the greater amount of business done by the corporation affected by the statute, it may make a reasonable income, since the statute makes a positive and direct discrimination between persons engaged in the same class of business, and bases it simply upon the quantity of business which each may do.

On page 111 of the opinion, the court said: "While recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties, engaged in the same kind of business and under the same conditions, burdens are cast which are not cast upon the other. There can be no pretense that a stockyard which receives ninety-nine head per day a year is not doing precisely the same business as one receiving 101 cattle per day each year. It is the same business in all its essential elements, and the only difference is that one does more business than the other. But the receipt of an extra two head of cattle per day does not change the character of the business. If once the door is opened to the affirmance of the proposition that a State may regulate one who does much business, while not regulating another who does the same, but less business, then all significance in the guaranty of the equal protection of the laws is lost, and the door is open to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its direct results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business, and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would.

We think, therefore, that the principle of the decision of the Supreme Court of Kansas in *State v. Haun*, 61 Kan. 146, 47 L. R. A. 369, 59 Pac. 340, is not only sound, but is controlling in this case, and that the statute must be held unconstitutional as in conflict with the equal protection clause of the Fourteenth Amendment."

With respect to the act of Arkansas under discussion here, it is clear that there is no distinction possible with regard to switching operations over crossings in cities between roads less than one hundred miles long, and those over one hundred miles long. The evidence in this case shows that there are roads in the State of Arkansas less than 100 miles long which do more switching of the same kind and character at points in certain cities of the first and second class than does the plaintiff in error and other roads whose mileage is sufficient to place them within the penalties of the statute.

The Arkansas Central Railroad Company with a mileage less than 100 miles, switches over the tracks of the plaintiff in error at Fort Smith, according to the testimony of Mr. Wright (Tr. 59, 60). It uses only two helpers besides the engineer, fireman and foreman. It crosses all the public crossings in the city of Fort Smith that the plaintiff in error crosses and under the law in this case it is permitted to employ one man less than the plaintiff in error is required to employ and pay.

In Helena, Arkansas, which the records show to be a city of the first class, the L., N. O. & T. R. Co., which has a mileage of approximately four miles, does all the switching of the M. & N. A. Ry. Co., having a mileage of 359 miles. It does the

switching of the Y. & M. V. R. R. Co., a railroad of greater mileage than the M. & N. A. The record shows that this road of only four miles in length does all the switching for more than one thousand miles of railroad, and that it does practically two-fifths of all switching performed within the city of Helena, and over some of the same crossings switched by the plaintiff in error. It shows, further, that other crossings switched by this short road are more dangerous than those crossed by the plaintiff in error, on account of curve and grade, and that none of them are protected by gates or watchmen as is the case of the dangerous crossings switched by the plaintiff in error in this suit.

Another instance shown by the record is the case of the Warren & Ouachita Valley R. R. Co., which, with a mileage of approximately eighteen miles, does 65 per cent of the switching in the city of Warren, while the plaintiff in error does about 35 per cent. The two roads switch over the same number of crossings in the city, yet the shorter road is permitted by this statute, presumably designed for the safety of the public, and nothing else, to operate without the third helper, whereas the plaintiff in error, simply because it possesses a greater mileage, is compelled to employ an extra man. If the evidence in this case were sufficient to establish the necessity of a third helper on switch crews for the safety of the public using public crossings in cities of the first and second class in Arkansas, nothing could better illustrate the discrimination against the plaintiff in error, permitted by the act, than does the situation in the cities of Fort Smith, Helena and Warren.

The length of a railroad can have no possible connection with the safety of the public as affected by its switching operations. The act of switching a car across a public crossing in a city is just as dangerous to the public if performed by a railroad only one mile long as done by a railroad a thousand miles long. It is the same operation whether done by a short road or a long road, and fraught with the same danger to the public.

If the proper justification for this act is that it is necessary for the safety of the public, how can the length of the railroad, or the volume of its business, concern in the slightest degree the public safety or demonstrate the necessity for an extra man in the case of the railroad of greater mileage?

This act permits a road of less than one hundred miles in length to switch the same number of cars of the same kind over the same crossings in the same cities as the roads of over one hundred miles in length, but permits the shorter road to do it with one less man than the act declares the longer roads must employ.

There is no evidence in the record to show that the shorter road could perform its switching by virtue of its lesser mileage with any more safety to the public than can roads affected by this act. It is singular that the only testimony offered in the trial court in support of the contentions of the proponents of this class legislation was that of various switchmen, and none of them were able to say that there was any distinction, real or imaginary, upon which the classification, as made by this act, could be founded.

II.

ACT No. 67 OF THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS IS ARBITRARY AND UNREASONABLE AND REPUGNANT TO THE DUE PROCESS CLAUSE OF SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The act in question requires all railroads in the State of Arkansas, over 100 miles in length, to employ, in switch crews in cities of the first and second class, where yards are operated and cars switched over public crossings, besides the engineer and fireman, a foreman and three helpers. Plaintiff in error and other roads in the State of Arkansas and everywhere else, except in special circumstances, had, before the passage of the statute, employed only two helpers in addition to the foreman and engine crew. The testimony shows that the plaintiff in error, by reason of salaries paid to the extra men required by this act will be compelled to expend annually the sum of forty or fifty thousand dollars, for which neither it nor the public will receive any benefit. (See testimony of General Superintendent Dean, Tr. 121.)

In *Adair v. United States*, 208 U. S. 161, 52 L. Ed., 436, this court held invalid the act of Congress of June 1, 1898, prohibiting an interstate carrier from discharging an employee because of membership in labor unions, on the ground that the act was an invasion of personal liberty and a taking of property of the carriers affected without due process of law. In the course of its opinion, the court said that a fair and reasonable and proper exercise of the police power

can not be questioned, but that an unreasonable, unnecessary or arbitrary interference with the right of an individual to his personal liberty and property can not be sustained in the face of the due process clause of the Constitution. And, further: "While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraint as the common good or the general welfare may require, it is not within the function of government to compel any person in the course of his business and against his will to accept or retain the personal services of another." That such was the single purpose actuating the passage of the act under consideration, and the only possible object accomplished by its enforcement is only too apparent from a reading of the record in this case. In the case of *Mugler v. Kansas*, 123 U. S. 623, 31 L. Ed. 205, Mr. Justice Harlan, speaking for the court, said: "If the statute, purported to have been enacted to protect the public health and public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of the rights secured by the fundamental law, it is the duty of the courts to so adjudge." If the court may not consider the wisdom or propriety of the statute under consideration, it will nevertheless protect a constitutional right against the unwarranted assaults of the Legislature, and will not permit it to be destroyed by vicious legislation simply because it masquerades under a high sounding title. Whatever the motive of the legislative body or the purpose of a statute may be, its effect upon the guaranteed rights of citizens must determine its validity. *C., M. & St. P. R. Co. v. Tompkins*, 176 U. S. 167, 44 L. Ed. 417.

It is true that the title of the statute under discussion declares that it was passed for the protection of the public. Whether it does or not is a question which this court will decide, and further whether in so doing, the rights guaranteed by the Constitution are denied the plaintiff in error. The record contains the testimony of a number of men prominent and experienced in railroad management, employees both of the plaintiff in error and other railroads in and out of the State of Arkansas. Many of these men served as switchmen before attaining their present positions. Presumably they were qualified to speak with authority upon the effect of this act upon the public safety and the necessity of the extra man required by the act. Without exception, all of them condemned it from every standpoint of railroad operation. They say in the first place that there is nothing for the third helper to do, and that his presence on the crew would encumber it and detract from its efficiency as a unit. And, further, that there are no switching operations where public crossings can not be protected by the switch crew as constituted prior to the passage of the act. The truth of this testimony is self-evident. There is nothing involved or intricate in the operation of switching cars over a public crossing. The engineer and fireman, according to the testimony of these men, operate the engine, and the engineer controls the movement of the cars through the air brakes. The foreman directs the operations. One helper rides the cars to keep a lookout and to set brakes when they are cut off from the engine. The second helper couples and uncouples the cars. He and the foreman are both on the ground and both in a position to stand guard or flag at any public crossing necessary to be crossed. The third man required by the act, under the testi-

mony in this case, could only help these men perform operations which can be done by only one man at a time. The net result of his presence on the crew is that there would be one man with nothing to do part of the time. In these days of the rapid adoption of efficiency methods in business, large employers are glad to pay experts for plans whereby the useless man or machine may be removed; and the principle that excess in either is wasteful and extravagant and destructive of efficiency is too well established to be disputed. Yet this statute, invading, under the guise of public necessity, the right of plaintiff in error to efficiently manage its own business, compels it to employ help for which it has no use whatever, taking its property to the extent of fifty thousand dollars a year, and preventing the economical operation of its road.

The operation of switching, according to Mr. Dean, is conducted as follows: The first helper follows the engine and cuts off the car. He passes the signal to the engineer and receives signals from the field man, or the second helper. He looks after crossings when they are backing up. When they are pulling up a grade, it is his duty to be on the front end on the foot-board, to see that the switches are lined up and that everything is all right. The second helper assists the foreman in throwing the switches, and looks after cars going into the field. The third helper does about the same work. He says: "The extra helper is to help the second helper to do what he would be doing any way."

In other States no necessity for the third helper seems to have arisen. The Iron Mountain goes through four good towns in Oklahoma, viz.: Salisaw, Wagoner, Claremore and Nowata; also through Monroe, Alexandria, Lake Charles and

Vidalia, in Louisiana. In all of these towns switching is done across public crossings with as much safety with two helpers as the switching in Arkansas is done with three helpers.

Mr. T. A. Shea testifies that Monroe, La., is a larger town than McGehee, and that there is more industrial switching done at Monroe than at McGehee. Mr. S. H. Barnes, superintendent of the Midland Valley railroad, testifies that the railroads get as good service in Oklahoma from a train crew having two helpers as from a train crew having three in Arkansas. Superintendent Murphy, testifying with reference to switching in cities in Missouri, Illinois and Arkansas, says: "The methods employed in switching are practically the same; that in some instances it has been found to expedite the work by using three helpers. This is done to promote efficiency, and not because the third helper is needed to protect the public at crossings." Such an instance is a gravity yard in a place called Bush, in Illinois. In a gravity or hump yard it is necessary to place a switchman upon each separate car that is being switched, because the tracks are inclined, and it is necessary to apply the brake in order to stop the car. He says: "The engines cost from \$12,000 to \$24,000 each; and wherever the railroads find it promotative of efficiency, they do not hesitate to put on additional men." Mr. Taylor, superintendent of the Louisiana division, testified as to the method of switching in Louisiana, and that only two helpers were used in the crew of a freight train, and that this force was sufficient. Mr. Weeks, yardmaster for the Iron Mountain at Monroe, La., testified that the work at Monroe and Alexandria was the same as the work at McGehee, and that two helpers are sufficient. Mr. H. B. Bray, yardmaster for the Rock Island at Memphis, testified

that they used two helpers in their switch crews; that the work is probably more hazardous in Memphis than in Arkansas, and that they have no difficulty in handling the switching across public crossings. Mr. Kensinger, terminal superintendent for the Missouri Pacific at St. Louis, testifies that they have sixty-one switch engines in St. Louis, and supply something like five hundred industries, and that they have never had any trouble in handling that business with a crew having only two helpers. He testified that they have a hump yard where four, five or ten helpers are sometimes used, not for the protection of the public, but in order to promote efficiency. Mr. C. W. Streeter, superintendent of terminals of the Kansas City Southern at Kansas City, testified that they have 115 miles of track in that city, and 107 grade crossings, some protected by a flagman and others unprotected; that they use twenty-three switch crews, and handle an average number of cars per day of about nine hundred; that they have seventy-five industries with private tracks, and use a foreman and two helpers on all crews. Mr. J. E. Hutchinson, superintendent of the Frisco railroad company, testified that the yards they have in Arkansas are simple propositions as compared to the yards in Memphis, Birmingham and Springfield; that in neither of those cities are the three helpers required. Mr. William Neff, general superintendent of the Cotton Belt, at Tyler, Texas, testified that, on account of the heavy grade line in the yards at Tyler, Texas, a third helper was used there. He says: "I do not know of any law in any other State that requires the third helper. In Texas, where there is a full crew bill, switching is specifically exonerated."

What reason is there for the third helper? Mr. Wise considers that two helpers are sufficient. He says: "Where you overcrowd any business with men, the average is always used to the detriment of the others who could be used in the organization advantageously." Mr. Schweer, local freight agent for plaintiff in error at Hot Springs, says: "We have never had any trouble in this regular switching crew handling the work at this place that I know of. A crew consisting of an engineer, a fireman, a foreman and two helpers, in my opinion, is able to do the work here. Mr. Dean, having supervision over all the cities of the first and second class in Arkansas, reached by this plaintiff in error, testifies that there is not a single yard in any of these towns that needs the extra helper from a safety standpoint. He is corroborated by Mr. Shea, division superintendent at McGehee; Mr. Wright of the Arkansas Central Railroad; by Mr. Barnes, superintendent of the Midland Valley; by Mr. Murphy, general superintendent of the Eastern District of the Missouri Pacific. Mr. D. W. Moore, trainmaster at Little Rock, says: "In my opinion, taking the present condition, a crew composed of an engineer, fireman, foreman and two helpers is sufficient to handle the switching in the Little Rock and Argenta yards. A third man would add nothing whatever to the safety of handling those switch engines, as to the public going across the crossings." Mr. A. R. Taylor, superintendent of the Louisiana division, says: "The adding of the extra man does not give any more safety to the public." Mr. D. T. Wachter, terminal trainmaster in charge of the Little Rock and Argenta yards, testifies that the law requiring three helpers has not added anything to the efficiency of the train crew or the safety of the public at crossings. Mr.

W. J. McVann, yardmaster at Little Rock, says: "The additional helper is of no benefit for the protection of the public at crossings." Mr. M. F. Weeks, yardmaster at Monroe, La., says: "I can not say that I need an additional helper for safety and efficiency in doing the work." Mr. H. B. Bray testified: "The third man would be of no benefit to me in the protection of the public at crossings." Mr. M. O. Gay, general agent in charge of transportation matters of Little Rock terminals, says: "The third man does not add anything to the safety of the public at crossings." Mr. H. C. Lerew, yardmaster of the Cotton Belt at Pine Bluff, says: "There is absolutely no need for the third man for the protection of the public at crossings. I have, on more than one occasion, caught the third man up town while the other men were doing the switching." Mr. C. B. Wildman, superintendent of the Central Division, says: "In my opinion, as a railroad man, the third man adds absolutely nothing to the protection of the public at crossings, in switching." Mr. W. C. Morse, superintendent of the Memphis division, says: "From my experience as a trainman, I do not consider that the additional helper gives any more safety to the public at crossings than before." Mr. J. D. Moore, assistant superintendent at Helena, says: "In my judgment, the switching done now, with the additional man, is not any safer to the public than it was without the additional man. Our records show that we get a trifle less work done with the three men. In my judgment there is no use for the third man for efficiency or otherwise." Mr. Kensinger says: "The third man would add nothing to the protection of the public or safety." Mr. C. W. Streeter of the Kansas City Southern says: "The third man gives the public no greater protection at the crossings in doing switching."

Mr. Cornelson, superintendent of the Kansas City Southern at Pittsburg, Kan., says: "There is no necessity for the third man either for the safety of the public or the efficiency of our work." To the same effect is the testimony of Mr. Chas. Keys, yardmaster at Hoxie, Ark. Mr. J. E. Hutchinson, general superintendent of Frisco at Springfield, Mo., says: "I am quite sure that the third man adds nothing to the protection of the public at crossings." Mr. J. F. Hilton, engine foreman for the Cotton Belt, says: "From my experience and knowledge, having charge of the switching crews, a third helper is absolutely not necessary for the protection of the public at crossings, in doing our work in Argenta." Mr. B. T. Kehl, general yardmaster for the Cotton Belt at Jonesboro, says: "The additional man adds nothing to the efficiency of the work or to the protection of the public at crossings." Mr. Richards, Cotton Belt superintendent at Pine Bluff, says: "The third switchman is absolutely unnecessary for the public safety." Mr. William Neff testified to the same effect.

In rebutting the testimony of defendant, the State placed on the stand a number of switchmen. C. J. McKay, one of these switchmen, was asked this question:

Q. In your opinion, as an expert switchman, is it necessary at the crossings to have a foreman and three helpers?

A. Yes, sir.

Substantially similar questions addressed to each of the following witnesses, met with the same answer, to wit: J. A. Mellard, J. W. Holt, R. D. Carter, J. E. Phillips, F. H. Bingham, I. F. McGehee, H. A. Quenin, E. C. Holland, H. E. Cashier, J. A. Creath, J. Thornbrough and J. A. Cash. All of

these witnesses were switchmen except J. A. Creath, who was an engine foreman in charge of the switching crew at Hope, Ark.

When we come to consider the reasons assigned by the switchmen, the only reason stated is that in switching operations cars are being dropped, kicked or pushed across public crossings constantly, and that the safety of the public demands that the third helper be placed at the crossing. Mr. McKay testified: "In dropping a car over a public crossing, when you have three helpers and a foreman, the foreman will go to the switch, the man following the engine will stay on the footboard, the short field man goes on top of the car, and the long field man goes to the crossing. It takes four men to perform this operation, in my opinion. We could not do this when we had a foreman and two helpers. We dropped cars across crossings in the yards, when we had a foreman and two helpers. We would go over the crossings like they were not there; no switchman to guard the crossings."

Mr. Mellard testified: "They drop cars over public crossings every day and night in Little Rock and Argenta. Before we had the third helper, there was no one at the crossing to protect the public." Mr. Holt says: "Under the present law one man protects the crossings, while the other perform the regular duties, as before. Before we got the foreman and three helpers, the crossings were unprotected. We sometimes kick cars over public crossings." Mr. Carter testified: "When we are dropping cars, and have a foreman and three helpers, we place one man at the crossing before we make the drop of the car. Before we got the third man, we did not have a man to put there." All of the switchmen testified that they

dropped, kicked and pushed cars across public crossings, and assigned this as their reason why the third helper was necessary to protect the public at crossings. So much for the State's witnesses.

Mr. Shea testified that the third helper, the long field man, is used more to fill in the time than anything else. He does the cutting off of the cars; he becomes an assistant to the second helper or field man. Mr. Murphy testified that "the third man is probably used as a secretary to the foreman. That is about the best place that you could use him, because he will not fit in except under special conditions and at special points, no more than the fifth wheel in a wagon." He says: "If you were taking a string of cars from Argenta to Little Rock, the third man could not protect the crossings unless the engine pulled up to the crossing and stopped and let him go ahead. If you were pushing the train you would have to do the same thing." Mr. H. C. Lerew says: "The long field man is the one who sits around on the flat cars, and lets the others do the work. The third man could operate in the long field, but where you are handling only a few cars he is absolutely unnecessary. He would add nothing to the safety. He would add to the chances of some one getting hurt. The more men there are in a crew the more chances there are for some one getting hurt." Mr. Hilton says: "The extra helper we have does not go about the crossings at all. He does not do much of anything. He throws the switch and saves the foreman from doing it, is about all he does." Mr. Dean says: "It has been a conundrum to find out what is best thing to do with that third man. In some places he would take up more room on the footboard than we have there. We have had some cases where a man has been in dan-

ger by too many of them trying to climb on. We generally work him in the field assisting the other man, but sometimes he helps the foreman and lets him look after his bills and other matters; lets him get away from his engine at times."

With reference to crossings, Mr. Dean testified that: "*It is against the rules for trains to be switched across crossings without a man being on the car to see; if a man is standing on the front end of the train, going across the crossing, he would see both sides of the track.* In towns or cities where crossings are dangerous, the railroad is required to keep a flagman. In Hot Springs one crossing is protected by a flagman and three by bell. In Little Rock, the crossings are protected by watchmen wherever necessary for the safety of the public." Mr. Dean further says: "A switchman who would kick cars across a public crossing without a man riding them would lose his job if I saw him doing it." Mr. Murphy testified that: "It is against the rules of the company to drop cars across crossings in the yards, except in cases of emergency. The emergency would mean that there was only one end to that track that he wanted to drop a car on, and that he would necessarily have to drop it, instead of shoving it in. In years gone by there were tracks with only one end, but they are being eliminated as fast as the company can get the money to do the work with." Mr. D. T. Wachter testified that kicking cars over a crossing is not permitted by the company's rules, nor is it permissible to push a long string of cars from Argenta to Little Rock or *vice versa*. W. J. McVann testified: "We do not kick cars across crossings in Argenta yards." Mr. H. C. Lerew says: "In the operation of railroads, they sometimes drop cars, but not across crossings. They kick cars in the yards. They could not

switch them otherwise. They shove cars over public crossings." Mr. Morse says: "I don't recollect ever having seen a car kicked across a street crossing." Mr. L. L. Kensinger, superintendent, testified to the same effect. He says, further: "If you were going to drop a car over a crossing, you would first place a man at the crossing. No man but an insane man would do it without a man at the crossing." Mr. Hilton, engine foreman for the Cotton Belt at Argenta, says: "The switch is always on the crossing in our yards. There is absolutely no necessity for dropping the cars. There is not a track in our yards that I could not obviate dropping the cars at all." Further he says: "There would always be a switchman at the crossing, when we kick cars across. We had plenty of men on the average number of cars handled before the third man was required." Mr. M. O. Gay says: "I have never seen them kick any cars over an open crossing." Mr. Kensinger says: "If you were going to drop a car over a crossing, you would first place a man at the crossing. No man but an insane man would do it without a man at the crossing."

Several of the switchmen testified that it is against the rules to kick cars over public crossings. Mr. Mellard says: "*It is against the rules to drop cars across public crossings*, and I am very much opposed to doing it. Of the cars I handle, I do not drop 1 per cent of them." Mr. Holt testified: "I am told that it is against the rules to drop cars or kick cars across public crossings. I have been told that from my first railroad experience, but sometimes I do it, but with as much safety as possible." Mr. Holland says: "*It is against the rules to kick or drop cars across public crossings.*" The reason assigned by Mr. McKay for this operation is: "We are

limited for time, and we have so much to do, and we have to get through." And yet it was proved that the men were paid by the hour and were not responsible for any particular amount of work. The solicitude of these switchmen to get as much work done as possible for their employer is certainly very remarkable. They are anxious to get it done, if they have to violate the rules of the company, inflict injury upon person or property, and even incur risk of dismissal from service.

Mr. Schweer, freight agent at Hot Springs, testified: "I don't know of any accidents at crossings with these crews during the four years I have been here." Mr. Weeks, yardmaster for appellant, says: "I never heard of any accident happening at Pine Bluff." Mr. O. C. Cornelson, Kansas City Southern superintendent, says: "We had no accidents before the law was passed, and have had none since." Although the thirteen switchmen who testified for the State, when asked whether in their opinion it was necessary for the public to have three helpers in each switching crew, answered, "Yes," it is worthy of note that, when asked whether any accidents had occurred on account of the absence of the third switchman before the passage of the act, they invariably agreed with Mr. Schweer that no such accidents had happened. Mr. Mellard says: "I have worked fifteen years. I don't remember of ever hurting any one since I have been in the yard." Mr. Holt says: "I never had an accident to happen at a crossing. I have never hurt anybody by kicking a car across the crossing." Mr. Phillips says: "I never hurt anybody by dropping cars across Rock street. I have been switching cars ever since I have been working for the Iron Mountain." Mr. Bingham says: "I do

not recall ever having hurt anybody switching across crossings." Mr. J. F. McGehee says: "I don't know that we ever had an accident at a street crossing. I can not recall any at this time." Mr. Quenin says: "I have probably had more accidents since the law went into effect, in the same length of time, than before." After mentioning two accidents, he says: "The number of men on the crew had nothing to do with either of these two accidents." Mr. Holland testified: "I have no personal knowledge of any accidents on these crossings. Prior to the time this law went into effect, I only had two helpers. I did the same class of work, and never had an accident at a crossing." Mr. Thornbrough says: "We have never hurt anybody when I was with the crew. I don't recall that we have ever hurt a man." The unanimity with which these switchmen testify that no one had ever been hurt at a crossing, prior to this law, is as striking as the unanimity with which they answer in the affirmative the question of State's counsel as to the necessity for three helpers. Their testimony shows that the third helper is not needed for the protection of the public. The most that it tends to show is that it affords them a good excuse to disobey the positive rule of the railway companies in regard to kicking or dropping cars over crossings. It is a very remarkable justification which the State has attempted to make out in this case for the passage of this bill. These switchmen concede that the rules of the company forbid them to do the very thing which they say calls for the extra protection to the public afforded by the third helper. Their determination to disobey the company's rule seems to grow out of a desire, not so much to accomplish the tasks given them within as short a time as possible, as to create a condition which will require,

or give excuse for, the addition of a third switchman to the payrolls of the railroad companies.

Where a crossing is considered dangerous, cities require either that a flagman be placed there or an electric bell.

A number of defendant's witnesses, who are not contradicted on this point, testify that only a small per cent of the switching is done over a public crossing. Thus Mr. Murphy says that 85 per cent of the switching is done in the train yards, where there are no crossings. Mr. Dean testified to the same effect. Mr. Lerew says: "Eighty-five to ninety per cent of our switching is done in the main yards." Mr. L. A. Wallace says of the conditions in his division: "Where 98 per cent of the cars are handled, there are no crossings." C. B. Wildman says of the conditions at Van Buren: "We handle daily at Van Buren from three to four hundred cars. About 5 per cent of these would be across crossings." Mr. Morse says: "I estimate that not more than 5 or 10 per cent of the cars are switched over crossings in Wynne."

If the switchmen lose a little time in sending a switchman to a crossing, as required by the rules of the railroad companies, this loss falls on the companies. With a crew of two switchmen and a foreman, there is no reason why the crossing can not be looked after. One of the three men can be placed at the crossing, another at the switch, another where he can cut the car loose. The condition to be guarded against is too exceptional and unusual to call for an additional man to meet an emergency which can easily be handled by the foreman and two switchmen.

The method of switching is practically the same all over the country. If four switchmen are absolutely necessary to handle the business in Arkansas, they are equally needed in Missouri, Oklahoma, Louisiana, Tennessee and Illinois. Yet in none of those States, nor in any other State, do we find any statutory requirement of this kind.

If the fourth man were needed to protect the public at crossings, we should expect to find accidents happening due to the lack of his help; we should be able to trace some liabilities to that source. We should expect to find that some roads somewhere have employed him for this purpose. Railroads are vitally interested in avoiding accidents, which frequently occasion enormous expense. Hundreds of thousands of dollars, it is said, have been spent by the various roads in an endeavor to avoid accidents and to impress upon the employees the necessity of care for the safety of themselves and of the public.

The switching operations which, according to the State's witnesses, render necessary the fourth helper are (a) the pushing or shoving, (b) the kicking, or (c) the dropping, of cars over a public crossing.

In the operation of pushing or shoving cars, the engine follows the train or cut of cars. Cars are kicked in front of engines by cutting them off from the engine while going at a rate of speed sufficient to carry them over the switch to the desired position, the engine, of course, being in the rear of the car. The process of dropping a car is a little more complicated. The engine is in front; the car that is to be dropped being next to the engine (Carter's testimony, Tr. p. 689).

While the engine is approaching the switch and going at a rate of speed sufficient to carry the car beyond the switch, the car is disconnected, the engine's speed is increased, and it passes on beyond the switch down one track while the car rolls on down to the switch, which is thrown so as to permit it to go down another track.

Let us see now whether these several operations require the third helper in order to protect the public at crossings.

(a) Take the case of pushing or shoving cars over crossings. There is no need for a man at the crossing (see Switchman Holt's testimony, pp. 350-351). Switchman McVann (pp. 180, 181) says that in shoving over a crossing, the engineer has control, and can stop upon signal. The car is cut loose afterward. The three men can easily handle the cars, pass signals, etc. The engineer retains control until the crossing is reached. The State has endeavored to make the point that sometimes fifty to seventy cars are pushed from Argenta over the Rock street bridge to East Little Rock yards. Mr. Murphy (Tr. p. 118), Mr. B. W. Moore (p. 158) and Mr. Wachter (p. 169), all testify that no such an operation is permissible. Nor would the third helper be of assistance. Mr. Murphy (Tr. p. 113). A small number of cars might be shoved across the bridge to Rock street in safety with two helpers; but Mr. Murphy says that five helpers would be insufficient for the above number of cars, and that you couldn't put enough men there to properly protect it (Tr. pp. 118, 119). Such an operation as pushing that many cars across the bridge is very unusual, Mr. Wachter says. Nothing but an emergency would justify it. He says that a few cars are sometimes pushed over the bridge, on an average of about six or seven cars (p. 174). It

will be noticed that none of the switchmen testify that fifty or seventy cars are pushed over a crossing not already protected by a flagman, that at Rock street being protected by a flagman day and night.

(b) The operation of kicking cars over crossings is not insisted upon very strenuously as requiring the fourth man; nor does there appear any good reason why it should require his assistance. The engineer retains control and is keeping a lookout. None of the switchmen testify that it is necessary to have an extra flagman to protect this movement. The foreman and two helpers can do all that could be done by them with the help of the additional man. Appellee's counsel do not insist upon this point, nor do they indicate why the fourth man is needed.

Mr. Dean says that it is not permitted to kick cars against a public crossing (Tr. pp. 103, 104). Mr. Murphy, speaking from a wide experience of nearly twenty years, says: "It is not proper to kick cars across a public highway." He also says that the rules prohibit the dropping of cars at crossings except in cases of emergency, which means that there is only one end of the track that is open; that such tracks are eliminated as fast as the company can get funds to do the work (Tr. pp. 123, 124). Mr. Lerew says that if he ever saw a car kicked or jerked over a crossing, he would fire the man who did it (pp. 191, 192).

Mr. Morse never saw a car kicked across a crossing (p. 212). So Mr. Gay (Tr. pp. 187, 188) does not remember to have seen a car kicked or dropped over a crossing.

(c) Mr. Hilton, Cotton Belt switchman, testified that cars were frequently dropped over crossings in Argenta, but said that the switches were right at the crossings. Mr. McKay testified as to a number of streets where cars were dropped. He mentioned Main and Ninth streets in Argenta, and Rock, Commerce and Sixth streets in East Little Rock, and testified that each of them, except Rock street, was protected by flagmen from 7 in the morning till 6 in the afternoon, and Rock street at night also (Tr. pp. 295-297). He said that sometimes also cars were dropped at Ninth street in Little Rock, but couldn't name a time when it was done. He said there was a run-around track at Ninth street, which would obviate the necessity of dropping cars, since you can go around and push the car in, which would only take four or five minutes (p. 297).

Mr. Mellard testified as follows:

Q. Take the number of cars you handle, Mr. Mellard, off and on, what per cent of those do you drop across a crossing?

A. Why, I wouldn't drop one per cent of them. We kick them across the crossing.

Q. You don't drop a car once a day across a crossing, do you?

A. No, sir.

Q. Sometimes you go a month and never do it, do you?

A. The engine that I might have charge of or working on would.

Q. Take the crew you are with, you sometimes go a month and never drop a car across a crossing; is that true?

A. Some engines over there never drop one in months; others drop them every day.

Q. Do you drop them every day?

A. No, sir.

Q. Does the crew that you handle drop them every day?

A. No, sir.

Q. Now, how often, from your experience—take your experience, you have been there a long time—how often, in your experience, do you drop a car across a crossing, your personal experience?

A. Well, I haven't dropped one in some time.

Further, he says (p. 329) that Rock street, Little Rock, and Main street, Argenta, are the only places that he knows of where cars are frequently dropped—both, it may be added, protected by flagman.

Mr. McKay, one of the switchmen, testifies that it would take four men to properly drop a car over a crossing. He places the men as follows: One man at the switch; the second man at the crossing; the third man on the footboard of the engine; the fourth man on the car which is to be dropped. He says that the third man cuts the car off; that the fourth man can not ride the car and cut the car off at the same time. He said if there was no crossing, they could still use the extra man; *he could help ride the car.*

Mr. Mellard, one of defendant's switchmen, says that it is against the rules to drop cars across public crossings; that

of the cars he handles he would not drop one per cent; that some engines in Argenta never drop a car in a month.

This car that is being dropped is always next to the engine. Evidently, it is necessary to have a man at the crossing. If one is placed at the switch, no reason appears why the other man could not ride the car, pull the pin and then set the brake after the car reaches its destination.

Thus Mr. Kensinger (p. 222) says: "A man could hang on the train and pull the pin and ride the car in." He further says: "One man would throw the switch, and the other man would cut the car off and ride it. It have done it a thousand times."

Mr. Cashbier said that, where you had only two helpers, in shoving cars across a crossing, you would place one man on the lead car, and the other two where they could give signals (p. 401). One man would cut the car, another set the brakes, and the foreman give the signals (p. 402).

Mr. Creath, who is foreman of a switch gang at Hope, Ark., testified that, before the third helper was added, when kicking cars over a crossing, he stood at the crossing, one man would cut off the car, and the other would ride the car; that he gave signals to the engineer, *and then went and turned the switch* (p. 406).

Mr. Phillips testified (p. 370) that you could stand on the stirrup of a car and cut it off; *that he had done it many a time*. He further said that, if the speed is the same, it is the same proposition whether you kick or drop a car, and that whenever you kick a car you ride it (p. 370). He further testified that the field man generally jumps on the car and looks after

it when it is cut off (p. 371). He further said, when kicking cars, he has stood on a car and cut them off; that he would jump off; but, to prevent an accident, or something like that, he would ride the car down; that when they had only two helpers, a man would cut the car off, the long field man would ride it down.

In kicking a car, Mr. Carter says the man following the engine has got to stand on the car and cut it off. When asked why that could not be done when dropping a car, his only answer was that he had never seen it done (p. 355). He further said, on cross examination, that a man standing on the running board of the engine in the operation of dropping a car might fall off on the track and be run over, and that he would not incur this danger in riding on the side of the car; that there is a stirrup on the end of the car for the brakeman to stand on (Tr. pp. 356-358). It is true that the witness thought this operation dangerous, but he admitted that all railroading was dangerous.

If Mr. Mellard is right in saying that it is very unusual and against the rules to drop a car over a crossing, that you would not drop one car in a thousand (p. 331), it is certainly a very arbitrary and unreasonable thing to require the railroads, at great expense, to hire an additional man to assist in this operation, when his services are not needed at any other time or place, and when the operation in an emergency may easily be managed without danger to the public by a foreman and two helpers.

The officials who have testified on behalf of the defendant unite in saying that there is no need for the third helper, to

protect either the public or the men themselves; that, before this law was passed, the railroads got as much work from the foreman and two helpers as they now get from the foreman and three helpers. Mr. Dean testified that, under certain exceptional circumstances, one or more additional helpers might be needed to *expedite the work*, but not to promote the public safety. Wherever efficiency requires the extra helper, the roads would put him on, as it is their policy to get the maximum efficiency from an engine. See, also, Mr. Mellard's testimony to the effect that, before this law, the fourth man was used where there were no crossings, to facilitate the work, and not to protect the public (Tr. pp. 329, 330). They are apt to be needed in all hump or gravity yards, where a number of cars are to be dropped down different industrial tracks at the same time, one man being needed to set the brakes on each car. It is not contended that there are any gravity yards in this State.

Some of the witnesses were asked whether it was not a common practice to have a cut of cars on each side of the engine. Mr. Dean says that this is unusual, and not resorted to unless you have a wreck or something unusual happens to make it necessary. Mr. Murphy says that such a practice would be very unusual; that he never saw it done; that if he had he would have immediately stopped the man if he had jurisdiction (Tr. p. 113). None of the switchmen testify that such a practice is usual, nor is it insisted upon by the State as a reason for this enactment.

Mr. J. D. Moore, assistant superintendent at Helena, being asked if he got any more work done with the extra man, said: "Our records show that we got just a trifle less" (p. 417).

Mr. Dean (p. 49) says that there has never been any complaint as to any danger to the public or to the employees in Oklahoma or Louisiana where he has jurisdiction. He says it has been a conundrum to find what to do with the third helper. "In some places he would take up more room on the footboard than we had there. We have had some cases where a man has been in danger by too many of them trying to climb on. We generally work him in the field assisting the other man, but sometimes he helps the foreman and lets him look after his bills and other matters; lets him get away from his engine at times" (p. 50).

Mr. Murphy says the third helper would probably be a secretary to the foreman; that is about the best place you could use him, because the third man will not fit in except under special conditions, no more than the fifth wheel in a wagon.

Mr. Weeks testified that the only place where he had ever needed the third helper was occasionally on a long lead in the train yards, where there was no crossing, and where he might expedite the switching. Of course, the public safety is not involved. So also Mr. Morse.

Mr. Lerew states that the more men you place on the engine, the more danger there would be of the men getting hurt.

We think the foregoing discussion of the testimony sufficient to show that if there is any reasonable ground for the requirement of the third helper on switching crews it must be sought outside of the record in this case.

Another and perhaps more important objection to the statute under discussion is that it takes no note of special circumstances. Every switch crew operating over every public

crossing in every city of the first or second class in the State of Arkansas must employ the third helper. And this is the case regardless of the number of people using the crossing, whether one or one thousand. The crossing may be naturally dangerous or unusually safe, under or over grade, protected by gates, or bells or watchmen, it makes no difference. The plaintiff in error may switch over it once a week or every few minutes, with one car or fifteen, but the extra switchmen must be employed under penalty of heavy fine. It makes no difference for the purpose of this legislation whether there is or is not danger to the public at a particular crossing. The third switchman must be used in all cases, for the protection of the public, whether his use is necessary or not, whether it would contribute in the slightest to the safety of any one.

The testimony shows that in the case of most of the crossings where the switchmen thought another man necessary to protect the public at crossings, the railroads had already installed gates or watchmen for that purpose. There was nothing to show that this method previously adopted by the plaintiff in error and other roads was not sufficient. It is a fact too well known to call for comment here that the public desire for protection at railroad crossings has generally manifested itself by the requirement by municipalities concerned of gates, bells, or watchmen. Either of these protects the public, and either is maintained at less expense to the carrier. A statute might reasonably require the plaintiff in error and other railroads to protect public crossings, but to say that this shall be done by employing extra switchmen is unjust and unreasonable. The primary duty of a switchman is the handling of cars, and not the watching of crossings. His is a semi-skilled

profession commanding a relatively high salary, and he is not at the crossing he was employed to protect more than 15 per cent of the time under the evidence in this record.

In *Mo. Pac. Ry. Co. v. Nebraska*, 217 U. S. 196, 54 L. Ed. 727, this court, in holding a statute of the State of Nebraska repugnant to the Fourteenth Amendment, said: "Compulsory construction and maintenance by the railway company at its own expense and without a preliminary hearing, under penalty of a heavy fine for refusal, of sidetracks and switches necessary to reach grain elevators which might be erected adjacent to the right-of-way, can not be justified as an exercise of the police power, but such a statute takes the property of the railway company without due process of law, even if construed as operating only when the demand for such facilities is reasonable." And further in the course of the same opinion: "This statute has no reference to special circumstances. It is universal in terms. If we were to take it literally, it makes the demand of the elevator company conclusive, without regard to special needs, and, possibly, without regard to place. It is true that in the first of the present cases, the Supreme Court of Nebraska discussed the circumstances, and expressed the opinion that the demand was reasonable, and that building the sidetrack would not cast an undue burden upon the road; and, in the second, it somewhat less definitely indicated a similar opinion. So, it may be, although it hardly seems possible, that the sweeping words of the statute would be construed as, by implication, confining their requirements to reasonable demands. On the face of it, the statute seems to require the railroads to pay for sidetracks whether reasonable or not, or if another form of expression be preferred, to declare that a de-

mand for a sidetrack to an elevator anywhere is reasonable, and that the railroads must pay. Clearly, no such obligation is incident to their public duty, and to impose it goes beyond the limit of the police power."

In the case of *Washington v. Fairchild*, 224 U. S. 510, 56 L. Ed. 863, this court had under consideration the validity under the due process clause of the Fourteenth Amendment of a regulation of the Railroad Commission of the State of Washington requiring railroads to make track connections in certain instances. The court said in that case that no public necessity was shown which would justify under the due process clause of the Federal Constitution, an order of the Railroad Commission requiring trackage connections in certain instances, where there was no evidence before the Commission of inadequate service, and no proof of complaint or public demand, with no testimony that freight had been offered in the past for shipment between these points, or that any such freight would be offered in the future, and no proof as to the volume of business at any of these points, nor the amount of freight that would be routed over these connections if they were constructed, and no proof of increased revenue to the carrier nor saving in freight to the shipper. The court said: "Since the decision in *Wisconsin P. & P. R. Co. v. Jacobson*, 179 U. S. 287, 45 L. Ed. 194, 21 Sup. Ct. Rep. 115, there can be no doubt of the power of the State, acting through an administrative body, to require railroad companies to make track connections. But manifestly that does not mean that a Commission may compel them to build branch lines so as to connect with roads lying at a distance from each other; nor does it mean that they may be compelled to make connections at every

point where their tracks come close together in city, town or country, regardless of the amount of business to be done, or the number of persons who may utilize the connection if built. The questions in each case must be determined in the light of all the facts, and with a just regard of the advantage to be derived by the public and the expense to be incurred by the carrier. For while the question of expense must always be considered (*C. M. & St. P. R. Co. v. Tompkins*, 176 U. S. 174, 44 L. Ed. 420, 20 Sup. Ct. Rep. 336), the weight to be given the fact depends somewhat upon the character of the facilities sought."

In *L. & A. R. Co. v. State*, 85 Ark. 12 (106 S. W. 960), was held upon a prosecution against the railroad company for failure to locate and maintain a station at a certain point as commanded by the statute, that it was error to exclude evidence offered by the railroad company tending to show there was no public necessity for a station at the place named, the court stating that the fact, if proven, that the cost of erecting and maintaining the station would be greatly in excess of and out of proportion to the revenues to be possibly derived from business at that place, would be a matter for the court to consider in determining whether or not the requirement was arbitrary and unreasonable, and whether or not there was any corresponding necessity for the station. The court said that the question of the validity of the statute was one of law for the court, and that the court should call to its aid all the available facts and information concerning the public necessity for the maintenance of the station at that place, and the cost of erecting and maintaining it as well as any other facts tending to show whether there was any necessity for the station, whether

the requirement placed upon the railroad company to build and maintain is a reasonable one.

Considering the reasonableness of the statute under discussion in the light of all available evidence and information, we believe that it is not possible to escape the conclusion that this is an arbitrary exercise of the legislative power, an unjust and unreasonable interference with the right of the plaintiff in error to the use of its property and the management of its business under the law.

Respectfully submitted,

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APPENDIX.

ABSTRACT OF THE EVIDENCE.

E. M. WISE testified as follows: I live at Harrison, Arkansas; I am general manager of the Missouri & North Arkansas Railroad; I have been in the railroad business twenty-three years; have been general manager of the Missouri & North Arkansas Railroad about two and a half years. I have acted in the capacity of an agent, operator, claim agent, terminal superintendent, superintendent, general superintendent, vice president and general manager and assistant to the vice president. As superintendent, I had charge of the switching in yards. I acted as such about four years for the National Railways of Mexico. The Missouri & North Arkansas Railroad is 359 miles long. It begins at Joplin, Missouri, and runs to Helena, Arkansas. (It is here agreed that Helena, Arkansas, is a city of the first class.) In doing our switching at Helena it is done under a joint arrangement with the New Orleans & Texas Railway Company. Our yards are located out of Helena. To get into Helena we are compelled to use the Louisiana, New Orleans & Texas Railway Company. The expense of this terminal operation is borne on the wheelage basis. We not only use the yards and terminals of the L., N. O. & T. Ry. Co., but we use their station facilities. All of the freightage that we bring into Helena that has to be switched into any part of the city, our cars are switched by the L., N. O. & T. Ry. Co. I think the L., N. O. & T. Ry. Co. has four miles of track in Arkansas. They own no road except that right in Helena. Their station is located in Helena, and these tracks are necessary to take care of the business on this side of the river. They

have no facilities whatever on the Mississippi side of the river. I don't know of any other switching that road does besides ours. I don't know the exact length of the Yazoo & Mississippi Valley Railroad. The Louisiana, New Orleans & Texas Railroad, which has four miles of road all told, does the switching for both the Missouri & North Arkansas Railroad and the Yazoo & Mississippi Valley Railroad into Helena. I do not know the exact amount of business done by the Missouri & North Arkansas and the Yazoo & Mississippi Valley, when compared to that of the Iron Mountain, in Helena, but I should say that the ratio of switching would be about three to two, that is, the Iron Mountain uses three, and we use two. I should say the Louisiana, New Orleans & Texas Railroad Company will do two-fifths of the switching done in Helena, and the Iron Mountain three-fifths. The L., N. O. & T. Ry. Co. uses five men in the switching crew, namely: An engineer, a fireman, foreman and two switchmen. We do not have any trouble in handling the switching done by that crew there. From my knowledge and experience of the cities of the first and second class in Arkansas, I consider a crew of an engineer, fireman, foreman and two helpers sufficient to do the switching with perfect safety to the public and to the employees. I don't consider that, if an additional man should be added to that force, would in any way facilitate the handling of cars or switching of cars as to the safety to either the public or the employees. On the contrary, I think, if you add the fourth man, you impair the efficiency of the service, because there is only work for three men. Any business you overerowd with men, why the overage is always used to the detriment of the other that could be used in the organization advantageously. We switch over between

six and ten crossings in Helena. I do not think any of them are protected by bells or flags. I think the Iron Mountain has a bell right at their station. The Iron Mountain has three street crossings protected by flagmen or gates, but the Louisiana, New Orleans & Texas have none protected (Tr. pp. 31-34).

G. H. SCHWEER testified: I reside in Hot Springs. I am local freight agent for the Iron Mountain. I look after the freight business, pertaining to Hot Springs. All of the freight that comes in and goes out of here is under my supervision. I keep a record of the cars that come in and go out of the station. I give to the switching crew a switching list, that is, a list of the cars that are to be switched in the yards. On June 17, 1913, there were three passenger trains came into Hot Springs and three went out. There were four trains with six cars each, one train with five cars and one with four cars. The yardmaster takes these trains and pulls them around the wye, and switches them back on to the tracks at the shops. He handles them around on the wye; that is all the switching he does here. The switch engine takes the entire train. When it comes in he takes it out on the wye, turns it around and heads it back the other way, and takes it down to the shops to be cleaned. The train is not handled any more except it is put at the passenger depot to move out. About an hour and thirty minutes before it leaves, the switch engine takes the train, puts it up at the passenger depot, then the regular engine is hooked on to it. In handling these passenger trains and switching them, we switch them as an entire train. They are pulled over and across a crossing in a switch just as an entire train would be pulled. The engine pushes the train instead of pulling it. The

flagman is placed on the rear end on the platform. The company has a whistle for the crossing. In Hot Springs an engineer, a fireman, a foreman and two helpers compose a switch crew. This switch crew has been composed of an engineer, a fireman, a foreman and two helpers ever since I have been here, except on special occasions. We have never had any trouble in this regular switching crew handling the work at this place that I know of. This crew, consisting of an engineer, a fireman, a foreman and two helpers, in my opinion, is able to do the work here. They have been doing the work here.

We have the same size crew on the night switch engine. I don't know of any accidents at crossings with these crews during the four years that I have been here.

About handling the freight cars that come in here, there are freight cars to be switched to the different industries in the city. Probably an industry has one car. They will be switched probably one car at a time, or probably two cars or three. If a train comes in here with fifteen or twenty cars, it is pulled in on what we call the alley track, and then it is broken up with a switch. The switch engine, on an average, does not handle more than two cars at a time. These cars are taken from the train and carried to the various industries or tracks where they are located. If they are to be unloaded on the common unloading track, they are put on that track. On the date of June 17, 1913, I have a list of the freight cars that came in here. My first car here is a merchandise car, a car loaded in Little Rock containing freight from various points, Chicago, St. Louis, Kansas City, Little Rock, etc. The next car I have is a car of hay from Wagoner, Okla. Two cars of coal from Illinois, and a car of produce from Little Rock. We

have just one freight train in that day and one out. We had five cars in that train, and four of them contained interstate shipments. Both of the freight trains, the one in and the one out, were engaged in interstate commerce. The passenger trains, three in and three out, were all engaged in interstate commerce. One, No. 17, comes here from St. Louis; No. 18 goes from Hot Springs to St. Louis; No. 19 came from Kansas City, and No. 20 goes from Hot Springs to Kansas City; trains Nos. 844 and 843 are Pine Bluff trains. I understand they make connections at Benton with trains going to Texas and St. Louis.

The switching crew handles the freight trains. The total number of cars, including the passenger coaches, switched in Hot Springs that day were fifty in and out; thirty-three of these being passenger cars and seventeen freight cars.

CROSS EXAMINATION.

It usually takes about twenty minutes to switch a passenger train. It will not require any more help if there are a dozen coaches than it would if there were five or six. I think the same amount of help would do the work just the same. On Fair days they have a yardmaster on account of the volume of business. He has to look after the details. When trains come in there or go out, you have to switch the train twice. When the train comes in there, you have to put it away; and when it goes out, you have to put it at the passenger depot. You have to handle each train twice.

RE-DIRECT EXAMINATION.

During the Fair the yardmaster looked up the business to be done. He did not go near the engine. The regular switch-

ing crew did the work as usual. There is no occasion on which an extra helper is needed, except on Fair occasions (Tr. pp. 35-41).

J. W. DEAN testified: I live at Little Rock. I am general superintendent of the St. Louis, Iron Mountain & Southern Railway Company. I have charge of all the lines in Oklahoma, most all of them in Arkansas and the State of Louisiana. I do not have charge, in Arkansas, of the lines from Newport to the State line, and from Hoxie north to the State line, and from Paragould north to the State line. General Superintendent Murphy of St. Louis has charge of that. In my territory, I have a list of the towns in which we have to have extra switchmen under the new law of 1913. They are Newport, Little Rock, Hope, Texarkana, Paragould, Helena, McGehee, Pine Bluff, El Dorado, Van Buren and Fort Smith. That is all on my territory. Also, Hot Springs and Hoxie. In Mr. Murphy's territory there is Batesville. The Iron Mountain railroad is put to an extra expense, on account of this extra man, of about \$45,000 a year. There are several cities and towns of the second class that we did not put the extra man on, by reason of not operating a switch engine at those points. The switching is done by the regular train crews. I am familiar with all of the yards at these various points in which switching is done on our road. Hot Springs is a very bad yard to operate. It is on a grade, and has many street crossings and curves. I have no yard in my territory to compare with Hot Springs. I have been in the railroad business since 1877. I have held the positions of messenger boy, train dispatcher, yardmaster, trainmaster and various positions. I held the position as yardmaster at Hunter, Colorado, twenty years ago.

I had charge of the switch engines. After tht I was superintendent of terminals about three or four years on the Denver & Rio Grande Railroad at Pueblo, Colorado, and at Denver on the Colorado & Southern, and the Illinois Central at Memphis. I was superintendent of the Mexico National in the city of Mexico, and was in charge of the terminals there for about a year, and at Little Rock, for the Iron Mountain, about the same time. I was superintendent of terminals at Little Rock in 1905. I have been actively engaged in the railroad business ever since, in the positions of superintendent and general superintendent.

In handling cars, when a freight train arrives at a terminal, the conductor leaves his waybills at the yard; the yard clerk takes those bills and makes out cards showing the destination of the industry to where these cars are to be placed, and then he tacks the card on the side of each car, and the yard-master by that time takes the train and proceeds to switch that train and place the cars to the various tracks where they belong, and, when that is over, he will take probably two or three cars to a certain industry, two or three more to another, or it may be he wants to go out a half a mile or a mile to some industry, and there are other industries along the line, and he will take more than that number along with him. He will take more than a half an hour to take care of a train, such as would come into Hot Springs. When a train is broken up, you generally place it in the receiving yard, the main yard. At Hot Springs you switch over about three or four crossings. In Little Rock there is only one crossing from the Main street viaduct of Argenta, which is the north end of the line, to the Third street viaduct south of Little Rock, which, I judge, is about a

a mile and a half. Those trains there are switched without going over any crossings.

Q. Take, for instance, in Hot Springs, suppose a switching crew, composed of an engineer, a fireman, a foreman and two helpers, would go down to switch the car, what would be the duty of each of those? A. The foreman would direct the work and throw the switches. The man following the engine would cut cars off; the other helper would look after the cars after they were cut off, and shove them into the track, shut the brake off, if necessary, to block them, see that they are properly coupled up, and that they wouldn't run back. Q. As to crossings, going across a public crossing here while these three men, the foreman and two helpers, are busy with that engine, what opportunity, who could watch the crossing while they were crossing it? A. Well, the man in the field, the man who catches the cars in the yard from the man who cuts them off; the man called the field man, he does that; they are directed to do that. Q. Suppose you had a third helper here, would he add anything to the safety of these cars going across the crossing? A. None whatever. Q. Would he add anything to the safety of those operating the trains? A. No, sir. Q. Would he be of any service whatever to the switching crew in Hot Springs, if he followed the engine as the other switching crews follow it? A. I would consider he would be a detriment. Q. Mr. Schweer, your agent, testified that during Fair time here in Hot Springs that you had an extra man over here. Will you explain to the court what that extra man did? A. We leave it to the discretion of the superintendent to put on yard-master, to increase the station force or any force when there is any unusually heavy business, such as Fair time at Hot

Springs. People come here from all over the State, and come in great crowds, and expect to return in the same way. The foreman of the engine would not have time to do his regular work and look after the people, and see that the passenger trains are made up properly and dispatched on time, and the engines and things like that, and for that reason we put on the yardmaster. He has nothing to do with the switching crew. Yet, like we put on another train, he looks after the work as a supervisor in an official capacity. He does not follow the engine or make any pretense of doing any switching.

There is not a single yard in any of the towns that have been mentioned that needs the extra helper from a safety standpoint. A helper in any of the yards that I have mentioned would not add anything to the public safety or to the safety of the employees.

Before this law was passed we sometimes put an extra man on a switch engine. Take a yard such as the Little Rock terminal, Argenta. It is on a curve, and it would delay the switch engine to pass a signal from one man to another, if you have only two men; that is, the field man is so far off he can not communicate with the foreman and the man following the engine without considerable delay, and, to avoid this delay and stopping the switch engine for signals or something of that kind, the railroad company puts on an extra man, such as he had at other points where we have curved yards. Some places we put on eight or ten men. There is not a grade crossing between what is called the Main street station in Argenta south to the station in Little Rock. This extra man was put on there in order to keep the engine moving, and not for the purpose of safety. It would not add to the safety of the men,

the patrons of the road or anybody. When it is necessary to have this extra man, the railroad company puts him on in order to increase the efficiency of the crew, and not for the matter of safety. In all of these towns, except Little Rock, it is unnecessary to have an extra man. He is simply a dead expense to the railroad probably with the exception of one or two or three instances in the Little Rock or Argenta yard. In three or four heavy train yards it is customary to use additional men, but where they are doing light industrial work, two men is all that are necessary. If a crew were going from Argenta to the Dickinson brick yard, under this law, we would have to have an extra man. The distance is about two miles. They would travel two miles to go for a box car out there. If they had just one car to bring in from that place, we would have to send those men to get it. The switching that we would do at the Dickinson brick yard would be in that yard, and there would be no crossings. In pulling those cars from the Dickinson brick yard into Little Rock, it would simply be a straight haul. The engineer and fireman would do the looking out. What is true of the Dickinson brick yard is true of many other industries around Little Rock. It is true of the Big Rock Construction Company. The track of the Plunkett-Jarrell Grocery Company will hold about thirty or forty cars. As a rule, we put two or three in there at a time. In putting these two or three cars for the Plunkett-Jarrell Grocery Company on that sidetrack, we would have to use this full switching crew. As a rule, this is true of all industries around Little Rock. The heavy going cars are usually handled in the reception yard and the make-up yard. In Little Rock there is no crossing until you get out of the yard. Our road goes through

four good towns in Oklahoma, viz., Salisaw, Wagoner, Claremore and Nowata. Our switch crews in those towns are composed of an engineer, fireman, conductor and two helpers. A crew of five men handle all of our switch engines in Oklahoma. As far as safety is concerned, the work done there is just as safe as in places in Arkansas where we have the additional man. The efficiency is all right. There is no delay and no trouble. There has never been any complaint there as to dangers to the public or employees, where we have only two helpers. Our road goes through four good towns in Louisiana, viz., Monroe, Alexandria, Lake Charles and Vidalia. We have five men in our switching crews in Louisiana. The same business is handled in the same manner at Monroe, Louisiana, as at McGehee, Arkansas. They get out a train with as much safety at Monroe as at McGehee.

CROSS EXAMINATION.

I said that Hot Springs was bad to operate. This is on account of the grades and curves. The men can not see out very far, and we have to put the hand brakes on the car to keep them from rolling back and causing trouble; if you didn't, they would probably roll back on the men, and cause an accident. It is about a 1 per cent grade. The other yards in the State are almost flat. We have a field man in Hot Springs. It is his duty to see that the cars are coupled up that are shoved to him, and, if necessary, to set the brakes, and prevent them being shoved off the end of the track or shoved off on to another track and cause damage, and to look out for crossings. He is one of the crew, one of the helpers. No switching car goes over a crossing. They are not permitted to shove cars over a crossing without another man being on the car. He is

the first man going over. He is the field man; it is his duty to be there. It has been a conundrum to find out what is the best thing to do with that third helper. In some places he would take up more room on the footboard than we have there. We have had some cases where a man has been in danger by too many of them trying to climb on. We generally work him in the field assisting the other man, but sometimes he helps the foreman and lets him look after his bills and other matters; lets him get away from his engine at times. The towns I mentioned in Oklahoma will run from 3,000 to 7,000 in population. In Louisiana the towns are larger. Alexandria, Lake Charles and Monroe are probably about the size of Hot Springs. Vidalia is smaller. We will handle about ten cars at Monroe, McGehee and Alexandria, where we handle one car in Hot Springs. Business is not so heavy in Hot Springs as it is in Helena. The receipts at Helena are about a third more than they are at Hot Springs. One switch engine is sufficient to do all the work of Hot Springs. The Louisiana, New Orleans & Texas Railroad Company require two engines to do the switching in Helena.

The first helper is the man who follows the engine and cuts off the cars. The cars are marked showing which track they belong on, and he cuts them off and signals the foreman of the engine. He passes the signal to the engineer and receives signals from the field man. He looks after crossings when they are backing up. When they are pulling up a grade, it is his duty to be on the front end on the foot board to see that the switches are lined up and everything all right. The second helper assists the foreman in throwing the switches and looking after cars going into the field just the same as the other

field man. The third helper is the same. Their work is divided just about in that manner. The second and third helpers do about the same work. In other words, the first helper looks after that part of the train next to the engine, and keeps a watch over the crossings when going that way, and the second helper looks after the other end of the train and crossings when going in the opposite direction. The foreman throws switches, and gives signals and instructs the men where to cut off the cars and take up the brakes. In my experience as a railroad man, those two helpers and the foreman are all that I have ever used. The extra helper is to help the second helper do what he would be doing any way, and for that reason I have found that he was not necessary. I handled the Pueblo yards. Their grade is about one-half of one per cent. We have curves out there and bad crossings. At Alexandria and Monroe we have about the same number of crossings that we have in Hot Springs.

By the Court: Q. Mr. Dean, if I understood you correctly, you said the first helper follows the engine, cuts off the cars, passes the signals to the engineer and looks after the front end of the train. Is that about right? A. Yes, sir; when they are backing it. Q. You say the second helper would do what? A. He would assist the man in the field, the fellow out catching the cars. The foreman would throw the switches, and this other man would help the foreman throw the switches, and at the same time he would help the field man catch the cars and set the brakes, if necessary. The foreman would work along the trains, sometimes checking up the cars, seeing where they belong and making up his trains and seeing that the cars are put in the right track. The foreman directs the work of all

three helpers, where you have three. The engineer and fireman are in his charge. He is the yard conductor. Q. Now, suppose you had a train of say thirty or forty cars, you are switching there in the yard across a bad crossing in the city limits where there is a great deal of crossing of vehicles; suppose the first helper was looking after the front part, attending to his duties at the front; suppose the foreman is off on the other side and generally directing and supervising the work; say the other helper is down, say, at the far end of the train on the same side as the foreman; who then would look after the rear end of that train on the other side? A. Either the foreman, the field man or the other helper. Q. The foreman, though, is on the other side? A. Not permitted to let a car go across a crossing without some one being on the car; stop and wait for the man to get back, and then give a signal for him to go ahead. You would have to stop a train and wait; you have no right to shove a car over a crossing without a man being on the car; stop the car or give signals for the engineer to stop. Q. Now, suppose here should happen to be pedestrians on the track, do you think it would be just as safe for two helpers to look after the handling of these cars as three? A. Yes; because we have one man on the lead of the car, and the second man, I do not see where he would be of any help. Q. Couldn't you cover more territory on both sides of the trains and look after it better if you had three men than if you had two? A. I don't think so. I don't think it would be of any benefit. Q. Couldn't they see more of what was going on on all sides of the train and different parts of the cars—I mean if it had thirty or forty cars? A. Not so far as benefits are concerned. Q. Wouldn't it be of any help by being there so far as safety to the pub-

lie is concerned from any accidents? A. In my opinion they would not be. Q. Couldn't prevent any more accidents if you had four men? A. No, sir; in my opinion it wouldn't; have too many men on duty there. By reason of this extra man coming into the crew, there is a division of the work, and he is depending on somebody else to do something, which he wouldn't do otherwise. Q. Generally speaking, the principle of the division of labor obtains in all manufacturing enterprises. Isn't that generally regarded to promote efficiency and safety, that principle of the division of labor? A. We had that first in mind always in handling our work, and every superintendent of this system puts on whatever men is necessary to handle the work with safety.

By Mr. Kinsworthy: Q. Now, Mr. Dean, I understood you to say that it is against the rules for the trains to be switched across crossings without a man being on the car to see? A. Yes, sir. And if a man is standing on the foot end of the train going across the crossing, he would see both sides of the track. In my experience one man alone would attend to the business better than two. In the towns or cities where crossings are dangerous, we are required to keep a flagman. In Hot Springs there is one crossing protected by a flagman and three by bells; so whenever a train or car is approaching the crossing, the bell rings automatically until the car gets over. In Little Rock the crossings are protected by watchmen. In all the towns in which we have these yards where we do switching, when the town makes it necessary for the safety of the public to have a watchman we put one in there (Tr. pp. 42-53).

T. A. SHEA testified: I live at McGehee, Arkansas. I am superintendent of the Iron Mountain. I have what is known as the Valley Division, comprising the line from Little Rock to Monroe, and from McGehee to Ferriday, what is known as the south M. H. & L., and the line from Warren to Arkansas City, and the line from Luna Landing to Crossett. McGehee is a city of the second class. We are required under the new law of 1913 to use an extra switchman in our switch crew there. We have three crews regularly and occasionally the fourth crew. Monroe is the largest town we take in in Louisiana. Monroe is a larger town than McGehee. We use a foreman and two helpers with the switch engine, besides the engineer and fireman, in doing the work in Monroe. At Monroe the work is done as well as at McGehee, and with as much safety as at McGehee. There are more cars handled through McGehee than through Monroe, but there is more industrial switching done at Monroe. We have more trains at McGehee, but more switching at Monroe. My jurisdiction goes into Warren. The Warren & Ouachita Valley goes in there. That road is approximately eighteen miles long. They do 65 per cent of the switching done in Warren, while we do about 35 per cent. The Warren & Ouachita Valley Railroad passes over the same number of crossings that our road does in doing the switching there. It does all the switching for the cars that go over the Rock Island. They do the switching and placing them and leaving them from the Southern Lumber Company and from the Bradley Lumber Company, and also another mill over there of which I do not recall the name. The Warren & Ouachita Railroad, being less than 100 miles in length, does not have to comply with this law of 1913. They use only an

engineer, a fireman, a foreman and two helpers, sometimes only one helper.

I have been in the railroad business since 1883. I have held the position of track laborer, telegrapher, fireman, brakeman, conductor and engineer; also train dispatcher. I have never had charge of a terminal in the capacity of yardmaster. I have had charge of terminals as trainmaster, and also as superintendent. From my experience, an engineer, a fireman, a foreman and two helpers are sufficient to do the switching with safety to the public and employees. In my judgment, the additional man does not add anything to the safety of either. Since we put the extra man on at McGehee, there is no difference in switching now from what it was before as in regard to safety and efficiency. I might add to the contrary on account of the fact that too many men are on the job will result at times in something being undone that would have been done if there wasn't so many men around, one depending on the other. If a man has a thing to do that one man can do with safety, and has time to do it with safety, that one man can undoubtedly do it better than having two to do it. The foreman is a helper. One of the helpers is called the field man, and the other the foot board man. The crew is known as an engineer, a fireman, a foreman, a foot board man and a field man. Where three helpers are used the third man would be known as the long field man; in other words, the third man becomes an assistant to the field man.

CROSS EXAMINATION.

At the present time, using three men, we simply use the long field man to ride the cars in and walk down and see how

far he has shoved it, see how much room he has in the track where the view is obstructed. He walks down there, and comes back, and tells the foreman how many more he can shove in at that end or something of that kind, or, if the car is kicked off pretty fast, he rides it down and slows it up. We use the long field man more to fill in the time than anything else. He does the cutting. He reaches in and cuts off so many. It depends on what the switch list calls for. If it calls for ten or fifteen, he reaches in and cuts off that number. I understand there is one switch crew at Hot Springs, approximately fifteen or sixteen at Little Rock. When I said I had three switch crews at McGehee, I meant I had that many on my system (Tr. pp. 54-57).

J. H. WRIGHT testified: I live at Fort Smith. I am president of the Arkansas Central Railroad Company and manager of it. It is forty-six miles long. It runs from Fort Smith to Paris in Logan county. We go into Fort Smith over the Iron Mountain under trackage rights. We lease those tracks and use them in common with the Iron Mountain, having the same rights over them that they do. We do switching in Fort Smith over all of the tracks owned by the Iron Mountain. We have two switch crews there. One of them consists of an engineer, a fireman, a conductor and two brakemen; another consists of an engineer, a fireman, a conductor and one brakeman. We switch over all of the tracks that the Iron Mountain switches over. We have no trouble as to the safety of the public or of our employees. They are sufficient to do the work easily.

CROSS EXAMINATION.

We use the five men on the local freight train. The four men are used on a passenger train. They become a switching crew as soon as they tie up as a passenger train. The reason we have one more man on the local freight is because we unload the local freight along the road and require more than one man to do that work (Tr. p. 58).

S. H. BARNES testified: I live at Muskogee, Oklahoma. I am superintendent of the Midland Valley Railroad. We have 375 miles of main line. The line extends through Arkansas, Kansas and Oklahoma. About fifty miles of the road is in Arkansas, which includes joint track with the Frisco of sixteen miles. We reach Fort Smith, Greenwood, Hartford, Hackett, Midland in Arkansas. Fort Smith is the only town where we have to put the extra switchman on our crews in Arkansas, under the law of 1913. All towns outside of Kansas where we have switching crews have more business than we do at Fort Smith. In our switching crews in Oklahoma, we use an engineer, a fireman, a foreman and two helpers. In Fort Smith we use a foreman and three helpers and the engineer and fireman. It is rather hard to compare the work done in Oklahoma and Arkansas. Our business is rather light at Fort Smith. I get good service in Fort Smith. I think we get equally as good service in Oklahoma. I have been in the railroad business practically all of my life—about thirty-five years. I have been telegraph operator, station agent, brakeman, yardmaster, trainmaster and superintendent. In my experience as a train man, and from my observation, whether the additional helper adds anything to the switching crew depends on the character of the work being performed by that crew. On account of the

number of cars, there are times when more helpers can be used to advantage, enabling an additional number of cars to be handled. I do not think the extra man adds anything to the safety of the public or of the train crew. Sometimes, when very heavy switching is being done, we can handle more cars by using an extra man. As far as safety is concerned, I don't see any difference. In going over a crossing at Fort Smith, we station a man on the leading car, whether there is one helper or three. I don't see that two put there would add anything to safety or efficiency.

CROSS EXAMINATION.

As to how many cars would require three helpers depends on the grade of the yard, whether it is a yard where there is a grade so they can cut them and drop them. The limit is the number of cars you might pull or handle with your engine to begin with. You might, in what is known as a hump yard, use as many as a dozen men. In the ordinary yard having the ordinary grade, the character of the work depends on the number of cars they can handle. A hump yard is a yard on a grade, where the grade is sufficiently heavy so that, when you cut one or more cars off the string, the grade will carry them down, they will run. The grade causes them to move, that is all. Then you want the station man to throw the switches and catch those cars as they are cut off, perhaps give them a light kick, and ride them in possibly, according to the grade. You may have hold of fifty cars at the top of that incline and cut them in two fifty times, which would necessitate fifty men. That is of course exaggerating it. I think a 1 per cent grade would constitute a hump yard.

By the Court: Q. In a case of a public crossing in the limits of a city of the first class where there is a great deal of switching going on, quite a large number of cars, we will say, would not three helpers be a better protection to the safety of pedestrians or others in and about or trains than two helpers?

A. Not in my experience.

I don't mean that all yards of 1 per cent grade are hump yards. I never saw a hump yard in Arkansas. If there is any, I don't know it. It is necessary to put these hump yards where there is no grade crossings. I don't know of any law of the United States, outside of Arkansas, requiring an engineer, a fireman, a foreman and three helpers to constitute a switching crew (Tr. pp. 59-61).

E. M. WISE, being recalled, testified: If you have too many people trying to do one thing, you don't get anything done. In my opinion, the necessity of the third man on the switch engine corresponds to the necessity of having a driver for a man that is plowing with a single plow. I do not know where the third man would be of any benefit unless you make a crossing man of him (Tr. pp. 62-85).

J. W. DEAN, being recalled, testified: In Little Rock we are working about 17 switch engines; Newport 1, Hope 1, Texarkana 7, Paragould 2, Helena 4 to 6, Wynne 1, occasionally 2 there, McGehee 3 and 4, Pine Bluff runs 2 and 3, Van Buren 2 and 3, Hoxie 2 and 3, Fort Smith 2, El Dorado 1, Gurdon 1. We work one and two at Hot Springs. Out of the number of switch engines that I have mentioned that are used in Arkansas, the third man would be of use to use on about five. That would be in the breaking up yard in Argenta and the passen-

ger yard in Little Rock. A switchman who would kick cars across a public crossing without a man riding them would lose his job if I saw him doing it.

We have no hump yards in this State (Tr. pp. 86-105).

J. F. MURPHY testified: I live at St. Louis. I am general superintendent of the eastern district of the Missouri Pacific. My jurisdiction covers all the lines in Missouri, one division in Illinois, parts of two in Arkansas, and one in Kansas. I have the White River Division in Arkansas. It extends from a short distance south of Aurora, Mo., to Newport; the Missouri Division from a station called Moore to Hoxie, including Hoxie. I have all of the Iron Mountain railroad from Hoxie to St. Louis. In my territory in Arkansas we keep no switch engines, under the law of 1913, requiring a foreman and three helpers. We do switching at Hoxie, but that is not a city of the first or second class. We handle at Hoxie approximately 600 cars a day. I am familiar with Newport, Hope, Paragould, Helena, Pine Bluff, El Dorado, Van Buren, Fort Smith, Wynne, McGehee, Hot Springs. The cities of Little Rock and McGehee are the only ones I believe that handle more than we do at Hoxie, of the towns I have mentioned.

There are no crossings in the train yard proper at Hoxie. We cross three crossings, I believe, between the entrance to the yards and the connection with the Frisco. We cross them in doing switching. We use a foreman and two helpers. That is all the assistance we need. The third man would not be of any assistance to me in doing that work. As to my experience, I began as a boy in 1887. I filled every position in the yard

service from messenger boy to general yardmaster and trainmaster of terminals. That included the positions of switchman, switch foreman, assistant yardmaster, night yardmaster and general yardmaster; was then promoted to trainmaster and in 1899 and 1901 to superintendent of terminals at Kansas City and Springfield, Mo. I acted as switchman at Kansas City and Peoria, Ill.; as yardmaster at Kansas City and Springfield, Mo., for the Frisco. I have been superintendent on practically all divisions of the Iron Mountain. I was superintendent at Little Rock from May, 1909, to June 19, 1911. I had what was called the Arkansas division, including the Little Rock terminals. My territory covered the main line from Hoxie to Texarkana; from Little Rock to McGehee; from Benton to Hot Springs, including the Hot Springs Western from Gurdon to El Dorado, and Gurdon to Womble. I have been superintendent at Van Buren. I had charge of all the railroad from Coffeyville, Kan., to Little Rock, including branches of the central division. In 1906 and 1907 I was superintendent of the Memphis division, with headquarters at Wynne. I covered the territory from Memphis to Bald Knob, and Helena to McGehee and Noble, and the Arkansas Midland. During the period I was superintendent of these various divisions, I was personally acquainted with those towns I have mentioned. The following cities under my jurisdiction do larger switching than McGehee, viz.: St. Louis, Jefferson City, Sedalia, Nevada, Carthage, Webb City, Joplin, Dupon, Ill., Bush, Charleston, Mo., and Poplar Bluff. That is all that I can remember now. All lines in the Southwest today are operating under what is called the standard rules; the rules are identical, though the customs and practices may be different at some

places, but it is very little. The method of handling the switching business in all of the towns that I have mentioned is the same as it is in Little Rock, Hope, Hot Springs and all cities that I have mentioned. In the same way the switching is handled on the Frisco at Springfield, Mo., and many other points on their lines. There are very few lines that operate under anything but the standard rules, which necessarily carries with it the customs and practices which are identical with those employed all over the State of Arkansas. The railroad companies have a contract with the B. of R. T. for doing switching. Not less than 90 per cent of the men in all of the yards over which my jurisdiction extends are B. of R. T. men. That means Brotherhood of Railroad Trainmen. They are the same people that do the switching in Arkansas. At St. Louis, for instance, there is more business done over the crossings than there is at Little Rock or any of the towns mentioned here. That is the only difference; the methods employed are the same. The crossings are not all alike, but they are practically the same. The only yards where we employ more than two helpers and one foreman are Dupon, Bush and St. Louis. The only yard in St. Louis in which we employ more than two helpers is what is known as Twenty-third street yard. The grade of the yard from the lead will permit cars rolling after they are cut off, and when the engines come in they use a couple of additional men to ride these cars because they can not kick them enough to roll in the clear; the same as you do in 80 per cent or 90 per cent of the yards all over the country. We have no conditions of that kind in any of the yards in Arkansas. There are no crossings in that particular yard. In St. Louis the St. Louis terminals is the only place where we employ three help-

ers in switching across crossings. We have one or two, possibly three, engines at work on the outside of the city, working industrials that are obliged to do their work from the main line. We have double track on both lines out of St. Louis, but there are some industries located out there where there is not sufficient facilities in the plant proper to do the switching, and they have got to do it on the main line, and with those switch engines we send flagmen, men who have been in the service for a long time, and every one able to do a job of switching. We send him out and stop at the industry to do some switching, and he goes out to protect that end of the train. In Kansas we employ one helper and one foreman. The same is true in Illinois, except at a place called Bush, where we have a gravity yard. If we need additional men for efficiency, the men would undoubtedly be put on, because those engines cost us anywhere from \$12,000 to \$24,000 each, and the aim of the management of any railroad, especially at this day, is to get every minute's work out of that engine; in other words, get its maximum efficiency, and if an additional man, two men or ten men, would get more work out of that engine, we would have the ten men on there. From my experience, a third man would not be of any benefit to the railroad company in its work in any of these towns mentioned except when I was superintendent at Little Rock, there was either two or three crews working in Argenta train yard. They had the third helper put on there primarily to pass signals, but those are the only crews in Little Rock yards that I would consider it necessary to put another man on.

Q. If it wasn't necessary to put him on to facilitate the work or put him on to make it safer, would it be necessary to put him on for any other effect? A. To make another job.

Q. In switching in these various towns we speak of in Arkansas, leaving out those crews you spoke of in Arkansas, that is, Little Rock, would there be anything for a third man to do? A. No, sir. Q. Now, Mr. Murphy, in switching cars, suppose the train comes in and you want to break it up and place the cars or kick the cars on to the lead, describe to the court how it is done? A. There are various ways of doing that; the customs are not the same all over. Ordinarily, though, in the handling of trains, the bills went to the yard office, and the yard clerk made out the cards, went out and tacked the cards on, the car inspectors inspect the train in the meantime, and, when the yard clerk got through, they were ready for the switch foreman to separate them, classify them, in other words, to switch them to the various tracks, classify them. That is all there is to it. If they were in a hurry or had an important train, say important loads in it, they would cut it in the middle and pull it from both ends and switch it, two cars in this track, three in another and one on another. They have a train probably where industries are collected for a certain district, cars for that particular territory, say, for instance, Plunkett-Jarrell Grocer Company, all East Little Rock stuff, except perishable, would be dropped on one track. The next morning an engine would couple onto that entire string of cars that was on that track, pull it to East Little Rock, and there it would be separated and placed at the various industries around East Little Rock. There are two, three or possibly four crews over there in Argenta that had the third helper. There was one man, the man following the engine, whom we call the pin puller. He pulls out the pin, and that separates two cars. The foreman carries a list when the cars are not carded, showing the

destination of the cars, and he will tell the men to cut off one car, three cars or five cars, whatever he wants to classify to certain tracks. In many yards the cars will roll off without anybody riding them. In some places they have to ride the cars to avoid damage to the cars or other cars standing on the track. It is often necessary for the field man to ride those cars, but that is the exception, because all yards are constructed with the view of avoiding that if possible. Leaving out those particular engines, the third man would probably be used as a secretary to the foreman. That is about the best place you could use him, because the third man will not fit in except under special conditions, no more than the fifth wheel in a wagon. Won't fit only under special conditions, and at special points. You put the second fireman on an engine—now what would he do? That is apparent to anybody. Now, the same condition applies with the third helper on switch crews in Arkansas. If you were taking a string of cars from Argenta to Little Rock, the third man could not protect the crossing unless the engine pulled up to the crossing and stopped and let him go on ahead. If you were pushing the train, you would have to do the same.

Q. The attorney for the State asked one of the witnesses if he had an engine with a string of cars in front of it and a string of cars behind it, and if he was kicking those cars each way, how would he do that with one man and two helpers? A. In the first place, a man that would do that wouldn't remain in the railroad service very long as a foreman. What he would do, he would cut off the cars on either end of the engine, and leave them stand there, and complete his work with the other end. That is an unsafe practice, and I will say I never saw

it done in all of my experience. If they do know of anything of that kind, it is a very unusual condition, because there is no office, yardmaster, trainmaster or superintendent or anybody else that will tolerate that kind of a movement. If he did undertake to kick both ways, he would have to have a crew at both ends. The heavy switching is usually done on what is called the lead, where the tracks break off from the ladder track. This is in the main yard where 85 per cent of the work is done. There you classify all the industrial stuff for the tracks. They are taken to the yard and placed on certain tracks, classified, that go to certain districts. That is done in two ways. They collect cars off of different tracks, off the leads. They are classified in that way. They will gather up a lot of loads and empties from industries up to maybe a hundred, and they will pull those into the train yard, and they will separate those in the same way; in other words, get all the cars together that belong to a certain district. That is what we call classifying. I will say that 85 per cent of the work is done in train yards. There are no crossings practically in any train yard where there is any amount of work done, because it would materially affect the efficiency of the yard, and you could not get the maximum result in efficiency if you had any crossings in any train yards, that is a busy train yard. A crossing like Main street in Argenta is protected by a flagman. A third man would be of no assistance in protecting that crossing because there is a flagman there.

CROSS EXAMINATION.

I was superintendent in Little Rock two years. I was out among the switchmen more than most superintendents are. I was pretty well posted on the operations out there. In all of

my experience I never saw an engine in the middle of a cut of cars, that is, with a string of cars on both ends of the engine. If I had seen such, I would have immediately stopped the men, if I had jurisdiction. I never noticed anything of that kind in the Argenta yards. If a man should kick a car across a crossing without somebody on it, he should be discharged. I am speaking of my knowledge in the various yards which number in the twenties or thirties. I am speaking from the knowledge obtained from a school of experience of pretty near twenty years, and I say to you that it is not proper to kick cars across a public highway. I have seen it done, and stopped it instantly.

Q. Suppose there is a track on Ninth street, there is a flagman to guard that crossing, there is a train comes up on the first track toward Ninth street, those tracks stretch out parallel for a block toward Eighth street, this train here, this cut of cars, is between the flagman and the balance of the tracks, going toward Eighth street, a block of track there; don't you think the extra man on the switch crew could protect the crossing in that instance? A. I do not understand why it would be necessary for anybody if there was a train already on the crossing, as I understand you, moving over the crossing. I don't think there would be anybody attempt to pass that crossing while there was one train moving over it.

The statement was made here by somebody that those long cuts of fifty or sixty cars were shoved around over the road to East Little Rock. The man that would make a movement of that kind under the existing conditions there, taking into consideration the physical condition of the property, is not a safe man on anybody's railroad. The proper way under the

rules would be for that man to have pulled his transfer over to East Little Rock and back to Argenta. That is the way that movement was made when I had anything to do with this part of the railroad, because a man would be insane that would shove fifty or sixty cars ahead of him and over the Little Rock bridge and past the Valley station. I wouldn't want to say how many would protect such a train, because I never heard of such a movement of that kind in my life. I do not think a foreman and three men could protect a train at that point, and I think that is the reason nobody would make a move of that kind because you couldn't put enough men on that point to properly protect it.

RE-DIRECT EXAMINATION.

If you were pushing fifty or sixty cars in front of an engine from Argenta to Little Rock, you couldn't put enough men on it to properly protect it. The foreman and two helpers would protect it as well as three, four or five.

RE-CROSS EXAMINATION.

There is a 26-degree curve at the east end of the bridge, and you couldn't possibly put four men on that sixty cars and have a clear view of all of the men on the train at any time, and to pass signals. It is an unusual arrangement and a dangerous one, and I do not believe that there is a practical railroad man that would make such a movement of that kind. Railroad men don't do that kind of work. Men that do it don't stay in the business long, because there isn't any occasion for it. It would be necessary occasionally to run around the engine, run around the cut of cars and get his engine on the other end of the train; but the yardmaster or trainmaster

don't allow that kind of work. The railroads of this country in the last two years have spent hundreds of thousands of dollars effecting safety measures in operation, aided manfully by the men. There isn't a division of our railroad but what has got a safety committee, composed of the yard men and engine-men, superintendent, trainmaster, and they all work together. The object of that safety committee is to avoid just such conditions as you are trying to make me assume now. I know the conditions existing in East Little Rock. I am perfectly familiar with them. I know that there is no single man that would make the movement that you have described here—fifty or sixty or seventy cars ahead of an engine, shoving them around over a bridge and a 26-degree curve, and over the street crossing that is there. There isn't any practical men that do that kind of a job (Tr. pp. 106-120).

J. W. DEAN, being recalled, testified: There is no such a thing in Arkansas as the hump yard or gravity yard. The St. Louis, Iron Mountain & Southern Railway Company is put to an extra expense of between \$40,000 and \$48,000 annually on account of the extra switchman or helper required by the law in controversy. In my judgment, 85 per cent of the cars that are switched in the yards are not switched over grade crossings on the Iron Mountain (Tr. pp. 121-123).

J. F. MURPHY, being recalled, testified: It is against the rules of the railway company to drop cars at crossings in yards, except in cases of emergency. The emergency would mean that there was only one end of that track that he wanted to drop a car on, and he would necessarily have to drop it in place of shoving it in. In years gone by there were a great many tracks that had only one end, but they are being elim-

inated as fast as the company can get money to do the work with. I presume that there are tracks in Argenta and Little Rock where that condition still exists; I am not positive (Tr. p. 124).

R. C. WHITE testified: I am engineer of maintenance-of-way for the Iron Mountain railway company. I have been civil engineer for the defendant for six years. I am acquainted with the various yards in which switching is done. I have blue prints of the various yards. (Blue prints referred to and made a part of the witness's testimony are on file.) The blue prints of Argenta show all of the crossings. There are fifty-four streets or highways that cross the tracks at grade; sixteen subways and viaducts cross the tracks and rights-of-way. Nine of the grade crossings are protected by watchmen and one by electric bell. We have indicated on the blue prints in the yellow water colors all streets that cross the tracks and rights-of-way, and those that cross by a viaduct or subway are indicated by the words "subway" or "viaduct." Going south from the Union Station, the first grade crossing you reach is about twelve blocks distant. Going north from the Union Station approximately a mile and a half, there is a grade crossing, and also a viaduct. The grade crossing is protected by a watchman. The first crossing north of that is three blocks north of Main street, and is a grade crossing protected by a watchman. In fact, there are only two grade crossings from the Union Depot north to the city limits, and they are protected by watchmen. There are three grade crossings at McGehee. They are north of the main yard. In the main yard proper there are no grade crossings. There is very little switching done over what crossings there are. At Paragould

there are no grade crossings in the train yards, as distinguished from the industrial tracks. We have eight crossings at Paragould in reaching the industries. At Newport we have four. Newport hasn't exactly a main train yard; more of a combination yard, and there are two crossings located at one end and two at the other. One of these crossings is a busy one, and is protected by a watchman, and another by an electric bell. There are eight crossings in the city of Hot Springs, one of which is protected by a watchman and four by electric bells. There are no crossings at Texarkana across the main yards. There is one crossing over which some little switching is done; that is protected by a watchman. There are three crossings at Texarkana, and in addition one viaduct. One of the grade crossings is located near the north end of the yard and protected by a watchman and two grade crossings located further north of the yards proper.

B. W. MOORE testified: I live at Little Rock, Ark. I am trainmaster on the Arkansas division of the Iron Mountain. My territory covers Little Rock to Texarkana, Pine Bluff to Hot Springs, Gurdon to Womble, Pike City Junction to Pike City, Hope to Nashville. My duties are to supervise the handling of trains, train and engine employees, station force, yards and yard operations. The yard foreman of engines in Hot Springs, Gurdon and Hope come under my jurisdiction. I have held the positions of foreman, conductor, switchman, yard foreman, assistant yardmaster, general yardmaster, superintendent and trainmaster. I acted as switchman about four years. I am familiar with switching and the way it is done. The average number of cars handled in Hot Springs daily is thirty-one. That is the total average of the number

of cars taken in a day, that are handled. That covers the period of the last three months of 1913 and the first three months of 1914. Passenger trains arriving here head into the passenger station and are taken charge of by the switching crew, taken around the wye, shoved back into the yards at the roundhouse, remains there until it is then placed for departure at the station again. Freight trains arriving here head up past the switching lead of the yard, where the switch engine comes out and gets hold of the rear end, setting the caboose out, come back and get what number of cars they can handle, shoving them in, doubling the train into the yard; the yard crew handling the train switches it, in accordance to where it belongs, to the various industries or tracks assigned to certain commodities. In handling the passenger train, it is turned around the wye and switched as an entire train, shoved into the tracks at the receiving yard; and, if the track doesn't hold the entire train, it is set over to some other track. I work on the switching crew here in Hot Springs a foreman and two helpers, engineer and fireman. As to the distribution of these men, the switchman following the engine would couple the engine on to the rear end of the train, the other switchmen would go to the head end of the train; it would be the rear end of the train starting out of the station. He would attach what is known as a tail hold car and air connection or a backup hose for the purpose of controlling the movement by air from that end of the train. He would remain in that end of the train, and the foreman would locate himself in accordance with different positions of the train he saw fit to locate himself, passing around, going to the east wye. After going over the east wye switch, the man on the rear end of the train would throw the

switch, giving the signal to back up and shove around the wye, and the man following the engine would close the switch after passing over it, running to the head end of his train, at the end of his train that the engine is attached to, and they pass around the wye reversing their position as to the movement in the direction in which they are traveling until they return back through the yards, where the rear man would ride the rear end of the train into the receiving track, and if it was to be doubled over the foreman of the engine or the man following the engine would make the cut doubling over and blocking or setting brakes on the cars as the case may be. The switchman on behind could give the signals to the engineer by either hand or could apply his brakes. He could stop the train by an application of the air. In backing the train he would go in front, and his duty would be to keep a lookout and give signals. He has a backup hose with a whistle attached to it.

As far as handling that passenger train and doing the switching I have spoken of, two men can handle it. A third helper would not be of any benefit whatever. He would be of absolutely no assistance as to safety in going across crossings. He would be of no benefit as to doing the work. The maximum handling of freight cars in Hot Springs, on an average, I would say would not be more than eight. We have one train into Hot Springs a day and one out. They average 600 tons or from sixteen to eighteen cars to a train—that is, loaded cars—and from twenty-five to twenty-six empty cars out. I am familiar with the yards and switching in Little Rock and Argenta. I was general yardmaster there from 1907 to 1910. At that time the switching crew was composed of a foreman and two helpers, with the exception of what is known as the

hold engine, which is located at the north end of the yard, and the south engine which was located at the south end of the main yards at Argenta. In my judgment, taking the present conditions, a crew consisting of an engineer and fireman, a foreman and two helpers is sufficient to handle the switching in those yards. A third man would add nothing whatever to the safety of the handling of those switch engines as to the public going across crossings.

As to the Rock street crossing, a watchman is kept there. His duty is to watch the approaching movement of trains and of cars and to warn people from the track. When he is standing at the crossing, he can tell from the direction in which they are moving, whether they were going ahead or backing up. They would approach the crossing from either direction a sufficient distance for the watchman to know they were coming, and he would guard the public from the crossing, from going on the tracks.

The track at the Valley depot in front of the colored waiting room is used during the night to reach the merchandise houses and into a brewery there, and a few more industries; that is the brewery distributing track. Cars are shoved in there. Ninety per cent of the cars are put in there at night and taken out at night. No. 103 is the only passenger train passing there during those hours. She is due there at 8:50 p. m., I think. No switching is done on that track while there is a passenger train there. The rules prohibit trains, either passenger or freight, to pass the passenger train discharging or receiving passengers at a passenger station.

Hope is under my jurisdiction. The average number of cars handled daily at Hope is seventy-six. Hope is exclusively

an industrial division, with the exception of a connection with the L. & A. Railroad, and the A. & L. branch of the Iron Mountain, and the turn around of one freight train known as 71. That is the end of the division or terminus of that train. We turn the crew around. All the business that accumulates or comes into Hope or for connection with the L. & A. Railroad Company or industries at Hope or for points on the Nashville branch is brought in and set out by freight crews and handled by a switch engine. The class of switch engines used at that point can not handle more than fifteen or sixteen loads. The average number would possibly be five or six cars. The maximum would not be to exceed eighteen loaded cars. I am familiar with the switching conditions there. A third man adds nothing whatever to the safety of the public.

As to Texarkana, there are on an average of 412 cars handled daily. This number is exclusive of passenger equipment. It includes all through freight trains operating through the Iron Mountain connection. The only grade crossing located at Texarkana is located thirty-seven car lengths north of the north lead of the switching yard, and it would be seldom that they would handle that many cars. In the performance of the usual breaking up and classifying cars they wouldn't reach this crossing. They would reach it in going to the ice plant or a connection with the Cotton Belt. In my judgment, I don't think there would be 3 per cent of the cars that would reach this crossing, and possibly not that many when any trains pull over the crossing. In my judgment, a switching crew composed of an engineer, a fireman, foreman and two helpers could do the switching there with as much efficiency and safety to the public as to have the third helper. The third helper

would add nothing whatever to the safety of the public or employees or to the efficiency of the crew in doing the work (Tr. pp. 144-156).

A. R. TAYLOR testified: I am superintendent of the Louisiana division of the St. Louis, Iron Mountain & Southern Railway Company. My division extends from Monroe to Lake Charles, La.; from Vidalia, La., to Gurdon, Ark.; from Ferriday to Black River, La.; from Monroe to Huttig, Ark., and from Litro to Farmerville. My division takes in the town of El Dorado, Ark., which is a town of the second class. I have been five years agent and operator in Virginia, Tennessee and North Carolina; six years as train dispatcher in Mississippi; three years as chief dispatcher in Mississippi, twelve years as trainmaster in Mississippi and Louisiana, and two years as superintendent, a total of twenty-eight years. I was trainmaster on the Illinois Central in 1899 to the latter part of 1904, and on the Iron Mountain in Louisiana from 1906 to 1912. I am familiar with the method of switching cars in Arkansas and Louisiana. Vidalia, La., does considerably more switching than El Dorado, Ark. In Vidalia there are no crossings. Monroe is a terminal on the Valley or Louisiana division, and there is a great deal more switching than at El Dorado. There are fifteen grade crossings in Monroe, while there are only three or four in El Dorado. Switching is done in practically the same manner in Monroe as in El Dorado. At Alexandria there are four grade crossings in the yard. There is a great deal more switching done at Alexandria than at El Dorado. We handle ten or twenty times more cars. In Lake Charles we do a great deal more switching than we do at El Dorado. The yard tracks at El Dorado are practically level.

In Monroe we handle 366 cars daily. Each engine handles on an average of ninety-six cars. We handle 371 cars daily at Alexandria, an average of ninety-six to the engine. We handle sixty-one at Lake Charles, an average of forty-four to the engine. In El Dorado we handle thirty-one cars, one engine. We have an engineer, fireman, foreman and three helpers on this crew at El Dorado. In Monroe, Alexandria and Lake Charles we have an engineer, fireman, foreman and two helpers to a crew. From my experience, the force we employ in Louisiana is sufficient. Alexandria is a town of 15,000 inhabitants; Monroe, 13,500; Lake Charles, 14,500; El Dorado is a town of about 4,000 people.

As compared with the work done before and since the passage of this act, we do not get any more work done, nor is it done with any more safety to the public with the extra man. The adding of the extra man does not give any more safety to the public. There is not more than five or six hours' service for a switch engine during the entire day, and we have not got any more work. In fact, we lay them off part of the time in the dull season of the year (Tr. pp. 157-162).

T. A. SHEA, being recalled, testified as to his experience as a switchman and trainmaster.

D. T. WACHTER testified: I live at Little Rock. I am terminal trainmaster for the St. Louis, Iron Mountain & Southern Railway Company. I have charge of the Argenta and Little Rock yards. I have had twenty years' experience as a railroad man. I have acted as clerk in local freight office, switchman, engine foreman, assistant yardmaster, night yardmaster, general yardmaster, terminal trainmaster, and division trainmaster. As terminal trainmaster, I have supervision of

all the work within the yard limits in the terminals. I am familiar with the method of switching in Argenta and Little Rock. I have been terminal trainmaster eighteen months. I was such before this law went into effect. The law requiring three helpers has not added anything to the efficiency of the train crews or the safety of the public at crossings.

Q. The question has been asked here if a foreman and two helpers could handle with safety a train of fifty or sixty cars being pushed from Argenta to the Little Rock yards. Are cars pushed in front of an engine with a train of cars that way? A. They are not. Cuts of cars of that length are pulled from Argenta to Little Rock, or *vice versa*. We would not permit them to be pushed that way in going on to the sharp curve on the south side of the river. Kicking cars on a crossing is not permitted. We do not ever have a switching performance where we have a train of cars behind the engine and a train of cars in front of it and kick them both ways. If we had an engine in the middle of a lot of cars, some in front of it and some behind it, we would shove the cars up and cut those off from the front of the engine which we were not classifying, leave them stand there, and handle those on the other end of the engine.

CROSS EXAMINATION.

I do not know, at any time, of any cars having been kicked across a crossing. Q. Is it not a fact that they do it daily right in front of your office? A. No, sir. Q. Do you know whether they drop any cars around across public crossings in Argenta? A. No, sir; not in Argenta. Q. Do they ever drop any cars from out of the Smith yard down across the

Ninth street crossing and into what is known as the caboose track there next to the A. C. O. tracks? A. We have a little short wye, or little pocket there, that we use to run around a car or two at any time, if you want to change ends. Q. I am asking you if you don't drop those cars; hasn't it been the practice up until you discontinued the track of the A. C. O. to drop cabooses into the A. C. O. track? A. No, sir; we positively did not.

I have told my switchmen to drop cars when it was absolutely necessary, but not on crossings. There are no tracks in Argenta or Little Rock over which you can not get cars except by dropping them over public crossings. We sometimes drop them over the Rock street crossing, but not until they have made all arrangements for the safe handling of the cars, and notifying the crossing watchman that such is going to be done, and obtaining their acknowledgment that everything is all right. We sometimes shove cars over the Tenth street crossing in Argenta, and over the Third street crossing. You can see a signal around that curve some eight car-lengths. We shove from one to twenty-five. We rarely ever shove more than twenty-five. When the track has contained only a few cars, we have shoved them up into the Fort Smith yard, over track No. 9, over the crossing. We never shove them around there when the track is nearly full of cars. I do not recall having been requested by the representatives of the yard men to discontinue the practice of shoving cars around into the Fort Smith yards around over this street. I never drop any cars in onto the stock track into Argenta. We do not kick cars across Ninth street in Fort Smith yards. We cover the crossing, then the cars are cut off. Kicking a car over a crossing is when the

car is uncoupled from the rest of them, and not when the engine is shoving them over the crossing. I do not know anything about kicking any cars over the crossings in Argenta yards.

Q. When you are switching stock and the track is over the crossing, and you are switching from the main lines, don't you kick cars over the Main street crossing? A. The crossing is covered before the cars are cut off. If the crossing has once been covered, then the cars are uncoupled. It is a rule of the company not to kick any cars over a crossing. I never saw them kick any over a crossing. In going around the valley bridge curve, there is a space in there, probably eighth or nine car-lengths that you can not see any one; after the man had passed around the curve, then you could look around and see him easy. I would not consider that shoving cars around the curve there would be unsafe.

RE-DIRECT EXAMINATION.

This valley bridge crossing is protected by a watchman day and night. There is a watchman at the Ninth street crossing in Argenta.

RE-CROSS EXAMINATION.

There are three crossings out on the Fort Smith main line going west, that are not protected by a flagman. The Main street and Second street crossings are protected day and night. In Argenta the flagmen come off duty at 6 o'clock in the afternoon. The crossings are unprotected then from 6 o'clock in the afternoon until 7 o'clock the next morning, except by the switching crew. The flagmen on these crossings are familiar with each movement of the engine and the cars

where they are going to be kicked, and on what tracks (Tr. pp. 166-173).

W. J. McVANN testified: I am yardmaster at Little Rock. I have been in the railroad business for about eighteen years as yardmaster. I have also checked cars, run baggage, broke, run on trains, acted as foreman, conductor, switchman, engine foreman, and yardmaster. My jurisdiction as yardmaster extends over all of the yard in Argenta and Little Rock. The switching crews are under me. The law now requires me to equip our engines with a foreman and three helpers. Prior to that time, I had two helpers on my engines. The additional helper is of no protection to the public at crossings. Leaving out the three-lead engines in Argenta, the ordinary switching over town can be done with the same safety with two men as with three.

CROSS EXAMINATION.

It has been two or three years since I actually did any switching. I have seen them drop one car in Argenta yards with one man on it. We do not kick cars across the crossings in Argenta yards. We shove them over the crossings, then cut the car off afterwards. When we operate over crossings, the switchmen stay at the crossing; that is their position. One of the switchmen would be at the crossing when the operation is over the crossing. A switch engine on a long lead would need a third man. The switch engine and crew switch about to various parts of the yards. There is considerable traffic over the Main street crossing in Argenta. Cars are shoved every day in Argenta yards, but we have a man on

the rear end of them, you know. Whenever you do anything like that, you have one of the switchmen to protect it.

RE-DIRECT EXAMINATION.

We had one man to protect the crossing before we had the third man. The man following the engine has the duty of protecting the crossings. We shove cars over the crossings, and then cut them afterward, but we don't cut the cars and let them roll over the crossing (Tr. pp. 174-178).

M. F. WEEKS testified: I live at Monroe, La. I am yardmaster for the Iron Mountain. I have served as switchman, engine foreman, assistant yardmaster and general yardmaster. I am familiar with the yards at Pine Bluff, McGehee, Monroe and Alexandria. As to the grades and the manner of doing the switching, there is no difference in the way it is done in Louisiana and Arkansas. When I was at McGehee and Pine Bluff, the switching crew was composed of a foreman, two helpers, an engineer and fireman. I can not see that I need an additional helper for safety and efficiency in doing the work. I have a foreman and two helpers at Monroe. The work at Monroe and Alexandria, as compared with the work at McGehee, is about the same.

CROSS EXAMINATION.

I have seen the time at Pine Bluff when I could use the third man to advantage on the lead, but at no other time. I could use the third man on a long lead to advantage. I never heard of any accident happening at Pine Bluff. The lead is in the track that the ladder track leads off of. It is a straight line with the ladder track leading off from. When I said lead, I meant the lead in the train yard, and not on the industrial

track, because you don't switch cars in a lead on the train yard like you do in the industrial track.

RE-DIRECT EXAMINATION.

In using the third man on the lead track, you would not use him where you would be going across a public crossing; you would be using him in keeping from breaking up the equipment and in doing the work. I didn't intend for that to be on any crossing at all; I mean that for a train yard lead. The train yard lead in Pine Bluff, of which I was speaking, does not have a public crossing on it (Tr. p. 179).

H. B. BRAY testified: I live at Memphis. I am yard-master for the Rock Island at Memphis. I have served in the capacity of brakeman, conductor, engine foreman and yard-master. I followed the engine and was a helper. In Memphis we have two helpers with the switch crew. Our switching crews are composed of a foreman, two helpers, an engineer and fireman. Switching in Memphis is similar to that done in Arkansas. It is probably more hazardous in Memphis. As a matter of safety in going across crossings, the third man would not give any better protection to the public, for the reason that we handle very short cuts across crossings. We handle on an average of seventy-five cars a day with each engine. We have three engines that work there. They are all freight trains. I had charge of the Little Rock yards for the Rock Island for about three years, from 1909 to 1912. My crew was composed of foreman, two helpers, engineer and fireman. In my opinion, the third man would have been of no benefit to me in the protection of the public at crossings. We frequently used four men to help out with our work in

particular circumstances. In the Little Rock yards we had a condition there where the cars would roll back upon the lead; in that case we usually worked the fourth man, especially at night, to prevent the cars rolling back and cornering the cars that had been put in on another track.

CROSS EXAMINATION.

By cornering cars, I mean one car striking another. If the work should become heavy at any place we might need a third man. But he would have nothing to do with safety at crossings (Tr. 182-185).

M. O. GAY testified: I live at Little Rock. I am general agent in charge of the transportation matters of the Little Rock terminals. I have been section laborer, telegraph operator, agent, had charge of terminals; trainmaster on four or five different divisions in four or five different States. I have been holding the position I now have in Little Rock just about a month; previous to that I was trainmaster between Little Rock and Memphis. I have had charge of switchmen for fifteen years or more. In my judgment an engineer, a fireman, a foreman and two helpers are all that is needed to handle switch engines. A third man does not add anything to the matter of safety at public crossings. I have never felt the need of a third man as to the matter of protecting crossings for the safety of the crossings.

CROSS EXAMINATION.

I do not remember of ever seeing a car kicked or dropped over a public crossing. I have seen a cut of cars pushed over a public crossing (Tr. p. 186).

H. C. LEREW testified: I live at Pine Bluff. I am yardmaster of the Cotton Belt. I have had experience as a railroad man about thirty-five years. I have been foreman, switchman, conductor, yardmaster, superintendent and trainmaster. We have no crossings in our main yards. Eighty-five to ninety per cent of our switching is done in the main yards. I have been in the position of yardmaster at Pine Bluff four and a half years. Prior to this law, the switch crew was composed of a foreman, two helpers, and an engineer and fireman. Since the law, we have put on the third man. The third man has added nothing to the safety of the operation of the switch engines across public crossings. In some isolated cases, for the efficiency of the work, the third man is advisable. Where that is the case, the company is always willing to put him on. There is absolutely no need of the third man for the protection of the people at public crossings. I have on more than one occasion caught the third man up town while the other men were doing the switching. The position of the three switchmen is as follows: One man is supposed to follow the engine and draw the pins. A second man is called the short field man, and the other one is called the long field man. The long field man is the one who sits around on the flat car and lets the others do the work usually. The second man throws the switches and couples the cars up. He is called the field man where you are operating only two men. Where you have a crew with only two helpers, the foreman carries the lists, directs the cutting of the cars, closes the switches, directs the cutting of the cars, closes the switches, and gives signals. He is in charge of the switch engine and the two helpers. The third man could operate in

the long field, but where you are handling only a few cars, he is absolutely not necessary. He would add nothing to the safety. He would to the chances of some one getting hurt. The more men there are in the crew, the more chances there are for some one getting hurt.

CROSS EXAMINATION.

There is only one crossing there in Pine Bluff, Main street, that you might consider a blind crossing. If I should see any cars kicked across a public crossing, I would be the man that did it. I would fire any man who would kick a car over a public crossing. That is something that is altogether unusual in railroading. In the operation of railroads, they sometimes drop cars, but not across the crossings. They kick cars in the yards. They couldn't switch them otherwise. They shove cars over public crossings. In going up town with cuts of cars, they handle from one to twelve or fourteen cars; very seldom more than that. They shove the cars back to the yards over public crossings. Q. It has been testified here by other witnesses and stated that the amount of business to be handled depended on the number of men they use in the operation of their engines; in case business should increase to such an extent that a third man would be of necessity in the protection of the company's property, the employees' lives and the public, would you place him on in Pine Bluff? A. No, sir; I would put on the third engine. Q. You stated with the third man on the engine there would be more danger of the men getting hurt. Isn't it a fact that the more men the less liability there is as they can properly protect themselves? A. I don't consider it so. Every time you put a man on the

engine, you simply add that much more chances for him getting hurt (Tr. p. 188).

S. H. BARNES, being recalled, testified: I have been railroading practically thirty years in various capacities; have been station agent, train dispatcher, trainmaster and superintendent. I acted several months as brakeman. There is no material difference in the method of switching in Oklahoma and Arkansas. We do a great deal more business at Tulsa than at Fort Smith. We switch over public crossings at all of those places in Oklahoma. In Oklahoma the switch crew is composed of a foreman and two helpers, an engineer and fireman. We do all of our switching with that number of men. In switching across streets, there is no difference in the switching done in Oklahoma and Arkansas. From my experience I would consider that a crew of a foreman and two helpers would be as safe to the public in switching cars over a public crossing as with a foreman and three helpers (Tr. p. 196).

L. A. WALLACE testified: I live at Wynne, Ark. I am trainmaster for the Iron Mountain Railroad Company. I began railroading first as a yard clerk, and was brakeman, conductor and trainmaster. I have done switching as a local brakeman. I am familiar with the way switching is done in the yards at Paragould. The main yards there are in the south end of town. The industrial yards are in the north end of town. Where 98 per cent of the cars are handled there are no crossings. In the industrial yards out in town there are eight street crossings. In the train yards we handle on an average of about twenty-five cars to the engine. On the industrial tracks we handle about five or six cars. The indus-

trial tracks are almost straight with a very slight grade (Tr. p. 201).

C. B. WILDMAN testified: I live at Van Buren, Ark. I am superintendent of the central division of the Iron Mountain railroad. I have charge of the territory from Coffeyville, Kan., to Argenta, Ark. I have been in the railroad business about thirty-two years. I have worked as telegraph operator, agent, train dispatcher, chief dispatcher, trainmaster and superintendent. I acted as night yardmaster back in 1889 for a couple of months, and in 1898 for several months as night trainmaster for the Chicago & Alton, which position carries with it the handling of the night yard men. I have done some switching, not to amount to anything, though. I am familiar with the way switching is done in Arkansas and Kansas. There are two first and second-class cities in my territory in Arkansas—Fort Smith and Van Buren. We handle from 60 to 100 cars daily at Fort Smith. We switch across crossings on grades, in Fort Smith, to some extent. I have been in Van Buren seven years, five years as superintendent, and the other two as trainmaster. Prior to the present law, the switching crew was composed of an engineer, a fireman, a foreman and two helpers. We now have an additional helper. In my judgment, as a railroad man, the third man adds absolutely nothing to the protection of the public at public crossings in switching. The addition of the third man adds nothing to the efficiency of the work, in the towns I spoke of in my territory. In the train yard at Van Buren the tracks are level and straight, as a rule, and there are no crossings in the train yard. In doing the industrial switching there, we would ordinarily cross two or three crossings. We handle

daily at Van Buren from 300 to 400 cars. About 5 per cent of these would be across crossings. About the average number of cars that the switch engine will handle in doing industrial switching would be about three to five cars.

CROSS EXAMINATION.

The tracks at Fort Smith are all industrial tracks. We have no train yards. There are some curves there. The switching tracks in Fort Smith are scattered all over the town. Our tracks run over forty-six street crossings. Several tracks pass over some of these crossings (Tr. pp. 203-207).

W. C. MORSE testified: I am superintendent of the Memphis Division of the St. Louis, Iron Mountain & Southern Railway Company; have been such four years. I have held the positions of telegraph operator, station agent, train dispatcher, chief dispatcher, trainmaster, and superintendent. I have done some switching, three or four years ago. Seven years ago I was trainmaster at McGehee of the Valley Division of the Iron Mountain. As trainmaster, the switching crews come under my jurisdiction, also the movement of trains. Paragould, Wynne and Helena are cities of the first and second-class, where we have to employ the third helper.

The main switching yard at Wynne is on what is known as the Helena-Paragould main line, and north of the crossing on the Bald Knob-Memphis line. There are two or three tracks on the Memphis line where a small per cent of the switching is done. Both the yards are level. The switching tracks are both straight. We do not do much industrial switching at Wynne. There are four industries that we switch to there. In switching to these industries, the engines

do not handle more than three or four cars, ordinarily. The bulk of our switching is done in the main classification yard on the Paragould line, north and south line. Where this switching is done, there is one crossing, and that is at the south end of the yard. This crossing does not cross the yard, but crosses the main line just south of the south switches, which is south of the south ladder track. More or less switching is done over that crossing, which is south of the main classification yard. The foreman of the engine puts in most of his time at or very near that crossing. The crossing is not protected by bell or watchman. I estimate that not more than 5 or 10 per cent of the cars are switched over crossings in Wynne; probably 20 per cent are handled over crossings in the transfer tracks from one yard to the other and to and from industries. The average number of cars handled per day is 167, 93 to the engine.

At Helena we cross seven crossings in doing the switching. Two of them are protected by gates and watchmen, also. The average number of cars we handle in Helena per day is 195 cars, 41 to the engine. Switching at Helena is almost altogether industrial. The industries are principally outside of Helena. We cross quite a number of crossings in Helena, including private crossings in the mill yards. Prior to the time this law went into effect, I had charge of the yard I now have. Prior to this law I used at Wynne, Paragould and Helena a foreman, two helpers and an engineer and fireman. Since the law went into effect, I have added an additional helper. From my experience as a train man, I do not consider that the additional helper gives any more safety to the public at crossings than before. We do not get any more

work out of the engine with the extra helper in the yards mentioned.

CROSS EXAMINATION.

In my experience the only place we would need more than two men would be on the long lead, in classifying the cars; making and breaking up trains, or on long transfer tracks, possibly, in cities. As superintendent, I would not sanction pushing a cut of cars around a curve without a man on the front of the car. If you were pushing any considerable string of cars in one of the curves in Helena where a building is jamb up to the tracks, as they are in some places, where you could not see more than four or five or six car-lengths as the case may be, I don't think at that point you would need the third man. Q. If you had a cut of eighteen or twenty cars pushing them around one of those close curves where you couldn't see more than four or five car lengths, why you would need the third man at that point, would you not, to properly transmit the signals? A. Yes, we would, if we shoved that many cars; but it is not necessary. If it should become necessary to handle that many cars, we would take them in two cuts.

I don't recollect ever having seen a car kicked across a street crossing (Tr. pp. 208-213).

J. D. MOORE testified: I live at Helena, Ark. I am assistant superintendent of the Iron Mountain railroad. I have been in the railroad business forty years. I have occupied the positions of brakeman, switchman, yardmaster, agent and superintendent. I have been at Helena seven years. I know every foot of the Iron Mountain yards at Helena. I have a

general knowledge of the L., N. O. & T. Railroad at Helena. The L., N. O. & T. Railroad employs a foreman and two helpers at Helena on their switch engines. I consider the L., N. O. & T. yards more dangerous in switching than the Iron Mountain on account of their curve and grade. They have a very heavy grade, a much heavier grade than we have, in the yards at Helena, particularly coming from the passenger depot over Elm street down Missouri street where our depot is located, and then they also have a pretty heavy grade from Arkansas street down to the bottom or end of their track. They have more street crossings than we have.

[The defendant here offered to prove by witness J. D. Moore that the L., N. O. & T. Railway Company at Helena does the switching for the Yazoo & Mississippi Valley Railroad Company, a railroad more than 300 miles in length; and all of the switching for the Missouri & North Arkansas Railroad Company coming into Helena, said road being over 300 miles in length, and that, on account of the length of the road, the L., N. O. & T. not being fifty miles in length, it does not have to comply with the law and use the third helper, and that it does not comply with the law and use the third helper; and that, in proportion to the number of engines used by the L., N. O. & T. Railroad, it does as much switching in the town of Helena as the St. Louis, Iron Mountain & Southern Railway Company does, and switches across public crossings in the city of Helena. The court refused to permit the defendant to make such proof, to which the defendant saved its exceptions.]

In my judgment, the switching done now with the additional man is not any safer to the public than it is without the

additional man. Our records show that we get a trifle less work done with the three men. In my judgment there is no use for the third helper for the safety of the public for efficiency or otherwise (Tr. pp. 214-217).

L. L. KENSINGER testified: I am terminal superintendent for the Missouri Pacific-Iron Mountain at St. Louis; have been superintendent there for five years. I have had thirty-two years' experience in the railroad business. I have filled the positions of brakeman, conductor, switchman, yardmaster, assistant yardmaster, trainmaster, terminal superintendent and general yardmaster. We have about 340 miles of terminals in St. Louis. We have sixty-one switch engines at the present time. We have something like 169 crossings. Some of them are protected by gates; some are not protected. Some have bells. Out of the sixty-one switch engines, there are forty-three engines with a foreman and two helpers. They are what is known as outside crews, industrial crews. They start out in the morning with a train of cars that run from twenty-five to fifty cars. They pull them out to certain districts, and classify them and handle them to the different industries. We have something like 500 industries in St. Louis that our tracks cover. These forty-three switch engines pass over street crossings at grade. We never have any trouble in handling that business with that crew. A third man would add nothing to the protection of the public or safety. We have some engines with five helpers, some with four and some with ten. The ones with ten are in our hump yard. Our train yard engine, the engine that makes up the trains, use four helpers and sometimes five. There are no public crossings across the track they work in. There is a crossing at Twenty-

third street where trains are made up. It is protected by a crossing watchman and gates. We transfer cars from East St. Louis to the terminals over in Illinois. To make those transfers we use a foreman and two helpers. The Terminal Railway Company in their transferring use engines with a foreman and one helper, some with a foreman and two helpers and some with a foreman and three helpers.

CROSS EXAMINATION.

The yard where we break up the trains is a grade yard. We use more men to ride the cars. The more helpers you have the quicker you can break up a train. It is more dangerous to kick cars across public crossings than it would be to cut a car off in the yard where there is no crossing. I don't recollect ever seeing a car kicked over a crossing. They kick them every day in the local yards. If you were going to drop a car over a crossing, you would first place a man at the crossing. No man but an insane man would do it without a man at the crossing. Never in my experience have I seen that done without a man at the crossing (Tr. pp. 218-221).

C. W. STREETER testified: I live at Kansas City, Mo. I am superintendent of terminals for the Kansas City Southern Railway Company. I have had twenty-eight years' experience in the railroad business. I have worked in the capacities of switch foreman, yardmaster, general yardmaster, superintendent of terminals and a short time as brakeman. I have been superintendent of terminals of the Kansas City Southern Railway Company at Kansas City, Mo., eighteen months. The particular division over which I have jurisdiction is forty miles in length. It includes a total of 115 miles

of track. Included in that 115 miles are thirty-two miles of grade, varying from five-tenths of one per cent to six-tenths of one per cent. We have twenty-eight tracks having a curvature greater than twenty degrees. If I remember correctly, we have 107 grade crossings. We have eighty-six standard railroad crossings, and thirty-five street railway crossings. These crossings are in groups from one single crossing to as high as twelve in one place. Of the grade crossings, ten are protected by a flagman. The others are unprotected. We are using at the present time twenty-three switching crews. The average number of cars handled per day is about 900. The class of work is freight work, in and outbound transfer work and industrial work. We have a great deal of industrial work. We do a great deal more than some other roads. I think our road stands second in the industrial work. We have seventy-five industries that have private tracks. We use a foreman and two helpers on all crews. From my experience as a railroad man, and from my knowledge of switching, I find a foreman, engineer, fireman and two helpers sufficient for all of the work that is necessary for the efficiency of our work, and also for the protection of the public at crossings. The third helper gives the public no greater protection at crossings in doing the switching (Tr. pp. 222-224).

O. C. CORNELSON testified as follows: I live at Pittsburg, Kan. I am superintendent for the Kansas City Southern, northern division. My jurisdiction extends from Grandview to De Queen, Ark. I haven't charge of Ashdown. I understand we have no yard crew at Ashdown, but we have a yard crew at De Queen. We have two cities in Arkansas where we have to employ the third man—Fort Smith and De

Queen. De Queen is a district terminal point for the Kansas City Southern road. We handle about 300 cars a day out of that place. Figuring on the number of cars that come into the terminal at De Queen, and the number of cars out, the industrial switching at that station is very light. The train yards where trains are made up and broken lie outside of the city limits; that is, the greater portion of them do, and there are no street crossings there over the train yards at all. There are two highway crossings over the depot or industrial tracks over which there is a very small percentage of travel. About 1 per cent of all the cars that come in there, or pass through De Queen, are handled over the crossings at the depot or industrial yards, where the team track work is done. There are no crossings over the right-of-way in the train yards.

At Fort Smith it is more of an industrial proposition for the Kansas City Southern road. It is a terminal in a way over the branch over which it operates between Fort Smith and Spiro. We handle but one train out of Fort Smith in twenty-four hours, and one in, and each train handles on an average of twelve cars each way each day. The average exchange at Fort Smith runs around 225 cars; and as between our lines and other lines that we connect with there, making an average of about eight cars per day extra. We employ one yard crew at Fort Smith that works in daytime; that works from 7 o'clock in the morning until 6 o'clock in the afternoon. That crew is engaged in switching cars to the industries and team tracks, and from the team track and these various industries to the connecting lines. In switching freight cars with our crew in Fort Smith, we take twelve cars into Fort Smith over our road and twelve cars out every

twenty-four hours. We exchange with other roads, that is, deliver and receive eight cars. That would be thirty-two cars.

Our company is put to an additional expense in Arkansas on account of employing the extra or third man \$300 per month divided between Fort Smith and De Queen. Prior to this at Fort Smith, we had a foreman and one helper, except during the cotton season we put on an additional helper, making a foreman and two men. At De Queen, prior to the enactment of this law, we had a foreman and two helpers. Now we employ a foreman and three helpers. We had no accidents before the law was passed, and have had none since. I find that the third helper does not add anything to the safety of the public or the efficiency of the work. We got through in the usual number of hours in handling our business before this extra man was put on, and we do the work in the same number of hours now. There is no necessity for third man, either for the safety of the public or the efficiency of our work (Tr. pp. 225-233).

CHARLES KEES testified: I live at Hoxie, Ark. I am yardmaster. I have been in the railroad business about thirty-five years. During that time I have worked in the capacity of switchman, brakeman, conductor and yardmaster. I am familiar with the yards at Hoxie, Fort Smith, Van Buren, Gurdon and Argenta. I am familiar with the manner in which switching is done in Arkansas. I have worked in the yards at Fort Smith, Van Buren, Gurdon, Argenta and Hoxie. From my experience as a railroad man and my knowledge of switching, and how it is done in Arkansas, in my opinion, it is not necessary for the public safety or the efficiency of the switch engine crew to have three helpers. I do not think the

third man would add anything to the safety of the public at public crossings.

CROSS EXAMINATION.

If you had a gravity yard, and had to ride the cars, I would consider it necessary, to handle more business, to have more help. A gravity yard is one where cars roll, without being kicked, after they cut them off, and they have to ride them. We have tracks where the cars will roll (Tr. p. 234).

J. E. HUTCHINSON testified: I live at Springfield, Mo. I am general superintendent of the St. Louis & San Francisco Railroad Company. I have a little over 140 miles of road in Arkansas. The line enters the State at Mammoth Spring, and goes out of the State at Memphis. I also have fifty miles of main line running from a connection with this same main line twenty miles west of the Mississippi river crossing. Fayetteville and Fort Smith are towns of the first and second class on our road. At both places we have the extra man. I don't recollect any grade crossings across our main yards at Fayette Junction. Fayette Junction is outside of the city limits of Fayetteville. As to the cars handled, I would think at least 75 or 80 per cent of the total business done at Fayetteville is done at Fayette Junction. I doubt if we would handle twenty-five cars per day in Fayetteville proper. I think there are about seven or eight crossings in the city of Fayetteville that we would go over in doing the industrial switching there. We have only one switch engine at Fayetteville. That engine does the work both at Fayette Junction and in the city.

Fort Smith is a division point, and our yards are right in town. On the lead where the principal amount of the

switching is done, as I remember it, there are four crossings. They were protected by bell the last I knew of them. We have two yards on our line from Springfield to Memphis, one at Jonesboro and the other at West Memphis. Our road goes through Blytheville, but we do not have any regular switching crew there. We keep two switch engines at Jonesboro, and occasionally we work the third crew, but not very often. Jonesboro is an industrial proposition; not very much train work done there. We have quite a number of industrial tracks there, but all of the industrial tracks are not in the city. In doing the industrial work there, the cuts of cars are small; they will handle from four to fifteen or sixteen cars, and occasionally make train moves; take up a piece of train on one track and set it over on to another; and in that case they would handle a large number of cars, perhaps fifty or sixty. We keep two switch engines at Jonesboro, one day and one night, and occasionally the third one; one at Fayetteville; an average of four engines at Fort Smith, making seven engines in all. Our additional expense on account of the additional man would run about \$100 to the engine, or approximately \$700 per month. Our road extends into seven States: Kansas, Missouri, Oklahoma, Tennessee, Mississippi, Alabama and Arkansas. I am familiar, more or less, with the different yards in the different States. I guess Texas is the only one that I don't touch now. I know of no law in either of these States, or of any other State, that requires three helpers in the switching crew. The manner of switching in Arkansas is practically the same as elsewhere. The yards we have in Arkansas are very simple propositions, nothing like as difficult as Kansas City, Memphis, Birmingham or Springfield. We have sixty miles of terminal mileage at Springfield. There

are about seventy-five or eighty crossings at Springfield. Not more than ten of these are protected. The switch crew is composed, almost universally, of an engineer, fireman, a foreman and two helpers. We use that number at Springfield. The third man is absolutely not necessary, in Arkansas, either for the efficiency of the work or for the protection of the public at crossings. I am quite sure that the third man adds nothing to the protection of the public at crossings.

CROSS EXAMINATION.

We have places where we use ten or twelve helpers. We never use the third helper except on the gravity yard. They have switch engines at Memphis that they have four men on. It is possible that there are places over the United States where they use the third man not in gravity yards. In gravity yards, the cars will roll of their own motion. We have ten miles of industrial track at Jonesboro. There are several grade crossings in the city of Fayetteville.

RE-DIRECT EXAMINATION.

We have a yard in Kansas City that is a very heavy train yard; it is just a conservative proposition, and when our train movement is heavy, when the business coming in off of the road is heavy, we add a man to the crew that does the switching in that yard in the making up and breaking up of trains, and classifying cars, for the reason that cars cut off and switched into the tracks in that yard will run with considerable force, and it is necessary to ride them and set the brakes on them, and if we wait for a man to ride the car and then return to the engine to ride another before we cut the car loose, we lose a great deal of time with the engine, and by

adding a man we keep the engine working, and keep them pushing the cars into these various tracks with a man to ride them. I have never known of any place in these various States where the third man is put on on account of safety at the public crossings. Conservation of time and energy is a big item everywhere (Tr. pp. 237-244).

J. F. HILTON testified: I live at Argenta. I am engine foreman for the St. Louis Southwestern Railway Company. I have been in the railroad service about fourteen years. I have been engine wiper, fireman, brakeman, conductor, yardmaster and engine foreman. I have general supervision of the engines in the yards. We use one switch engine a day in Argenta. We have two yards in Argenta. The main yards are located in the end of town. We have three crossings in it. Two are located at the extreme east end of the yard and one at the extreme west end of the yard. In breaking up the trains, we cross one crossing quite frequently. We have what we call the freight house yards, right down at the foot of the free bridge, where our freight house and passenger station is. We have four house tracks down there. From my experience and knowledge in having charge of the switching crews, the third helper is absolutely not necessary for the protection of the crossings in doing our work in Argenta. The extra helper we have now does not go about the crossing at all. He does not do much of anything; he throws the switch, and saves the foreman from doing it, is about all he does.

CROSS EXAMINATION.

We call the fourth man the long field man. He doesn't go about the switches at all. We drop cars over public cross-

ings every day. We put one man on the engine to cut the car, and one man will ride the engine after it is cut. The short field man rides the car, and the foreman throws the switch and guards the crossing. The switch is always on the crossing in our yards. I don't know how they are in the Iron Mountain and Rock Island yards. Where I make the drop of the cars, the switch is always right at the crossing. There is absolutely no necessity for dropping the cars. There isn't a track in our yards that I couldn't obviate dropping cars at all. We do it for convenience and quickness, to save time. We sometimes push cars around and over crossings. We have one curve in the yard. That curve is about twenty blocks from the passenger depot. The yard office is right on the crossing. The yard office does not obstruct the view of the trainmen riding these cars. If you push a long string of cars around that curve, the yard office obstructs the view of a man back, but we have a man in the middle to obviate that. We did that before the third man was used. We have pushed as many as forty cars around that curve. We can transmit signals with forty cars the same as with ten. If you were flagging out, it would not admit the handling of so many cars.

RE-DIRECT EXAMINATION.

There would always be a switchman at the crossing when we kicked cars across. We had plenty of men on the average number of cars we handled before the third man was required (Tr. pp. 245-249).

M. O. GAY testified: I am familiar with the yards of the Rock Island in Arkansas, in the cities of the first and second class. I became familiar with them in my position as trainmaster. It was my duty to inspect these yards. We have the following places at which we are required to use the third man

under the new law: Booneville, Biddle, Little Rock, Argenta, Brinkley and El Dorado. We do not have a switching crew at Camden. We are working eleven or twelve switching crews at Biddle and Argenta combined. We work at Booneville with two switch engines; at Brinkley with one switch engine. We work two or three at El Dorado. On account of the third helper being added to each one of these engines in these cities, we figure our expenses to be increased in the sum of \$25,650 a year.

There are four crossings at Booneville over which switch engines sometimes pass. The average number of cars handled per day, in my best judgment, is about 150 cars per day. I don't believe we handle fifty cars a day over the crossings with the switch engine. From my knowledge and experience in switching, the third man does not add anything to the protection of the public in Booneville, and switching cars across crossings. At Biddle our main yards are located between what we call Sweet Home pike and Arch street, and it is not necessary but a few times a day for the switch engines to cross over these crossings. I have tried for the last thirty days to find where we were getting any value out of the third helper, whether he was doing any good day or night, but I haven't found out yet. He is of no protection to the public in any way; the third man doesn't cover either end of the cuts they handle. At Brinkley we use one switch engine most all the time. We handle about the same number of cars at Brinkley that we do at Booneville. There is more of the business handled by the road engines at Brinkley than there is at Booneville. The switching at Brinkley is rather more or less distributed over the different tracks, but the train yard proper

is between open thoroughfares; but it is only necessary, I believe, in one place, to cut the cars in the main yards, and we have four open crossings on the main line. We handle with the switch engine about 100 cars per day at Brinkley. There would be about $33\frac{1}{3}$ per cent handled to the industries in Brinkley. The larger per cent of the number of cars handled there are for the unloading tracks, and the freight house. It had been my experience that the third man has not added anything to the protection of the public at crossings in Brinkley. We have had more accidents since we put the third man on than we had before. He does not assist us in expediting the business at Brinkley.

At El Dorado, so far as the industrial work is concerned, the yards proper are located quite a little distance from the main line proper, west of the passenger station. I do not know of any yard where there is so little chance of accidents over crossings as I find at El Dorado. Nearly all of the switching is done in the main yards at El Dorado. My recollection is it is only a few times when it is necessary for the switch engines to go over crossings used by the public. They handle from 150 to 175 cars a day. There is not a very large per cent of these cars that go to the industries; quite a few go to the freight house, but the larger part of them are through cars and are handled in the main yards. The average length of a cut of cars that would be handled by a switch engine at El Dorado to the industrial tracks would not average over four or five cars. I can't see how the additional helper would add anything to the protection of the public at the crossings or to the efficiency of the work.

CROSS EXAMINATION.

I have never seen them kick any cars over an open crossing. I have never seen them kick any cars over an open crossing at Booneville. I have never seen them kick cars over the A. C. O. track, or over Main street in Argenta (Tr. pp. 250-262).

B. T. KEHL testified: I live at Jonesboro. I am general yardmaster for the St. Louis Southwestern Railway Company. I have been brakeman, conductor, yardmaster, switchman and engine foreman. I have been yardmaster at Jonesboro twelve years. The Cotton Belt works one day and one night switch engine. Prior to the law of 1913, the switch crew was composed of one foreman and two switchmen. Now we have the engine foreman and three switchmen. We do not get any more work done with the additional man. We get about the same. The additional man adds nothing to the efficiency of the work or to the protection of the public at crossings, in doing switching at crossings (Tr. p. 263).

E. RICHARDS testified: I live at Pine Bluff. I am superintendent for the St. Louis Southwestern Railway Company. I have been with the Cotton Belt twenty years in the capacity of operator, train dispatcher, chief dispatcher, trainmaster, assistant superintendent and superintendent. I am familiar with the manner of doing switching in Arkansas. There are four cities in the State of Arkansas of the first and second class where, under the law, we have to use the third helper—Jonesboro, Argenta, Pine Bluff and Texarkana. At Texarkana that lies almost to itself. We make and break trains in the yards; and then we have a team and industrial

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track lying adjacent to it. The grade is practically level in the train yard, at Texarkana, except at the extreme north end. There is an ascending grade or descending grade going into the yard, but there are only two little industries located up there, a brick kiln and an oil company. That part isn't switched over once or twice a week, so the yard is practically level. In the train yard there are no crossings at all. North of the north lead there are two crossings, but they are outside of the lead, and they are not passed over by these switch crews more than possibly twice in twenty-four hours. The Texarkana yard is essentially without a crossing. Practically the entire business would be handled without going over a crossing. We have a viaduct going over our yards, a very expensive one; all the travel goes over that. Outside of our main yards, we do not have, probably, over three industrial tracks in Texarkana. We handle on an average of about four cars over these tracks. They do not go over any unprotected crossings. There are no crossings on these tracks. The third switchman or helper is absolutely unnecessary for the public safety, nor does it add anything to the efficiency of the crew.

At Pine Bluff we have our large train yard in the eastern part of the city. It lies principally outside of the city limits. There are no crossings in that yard in the city limits. We have some industrial tracks further west up town. Ninety per cent of the switching is done in the main yard. Probably not over 10 per cent of the business in Pine Bluff is industrial business. The third helper does not add anything to the safety of the public in switching at Pine Bluff, nor does he add anything to the efficiency of the crew.

As to Argenta and Jonesboro, the third helper adds nothing to the safety of the public in switching or operating cars over public crossings. The additional helper has just about the same relation to the crew as the fifth wheel to a wagon. Our actual expense by reason of that law is \$11,292 a year. We go into Shreveport, La., and Illmo, in Missouri. The work at Illmo is more than double that at Pine Bluff. At Illmo, Mo., and Shreveport, La., we use a foreman and two helpers. We find these all we need. I do not know of any law outside of Arkansas where we are required to have the third helper (Tr. pp. 265-272).

WILLIAM NEFF testified: I live at Tyler, Texas. I am general superintendent of the St. Louis Southwestern Railway Company and first vice president and general manager of the St. Louis Southwestern Railway Company of Texas, and also connected with other smaller branches of the Cotton Belt. I have charge of the Cotton Belt in the States of Missouri, Arkansas, Louisiana and Texas. I have had personal observation of switching in the various territories I mention. I am familiar with our yards in Illmo, Missouri, Jonesboro, Ark., Pine Bluff, Argenta and Texarkana, Ark., and Shreveport, La. The greatest amount of switching done in any of these yards is at Illmo, Mo. At Jonesboro there is a daily average of 312 cars, Argenta 47, Pine Bluff 372 and Texarkana 205, while at Illmo, Mo., we handle 1,090 cars; Shreveport 88 cars; Commerce, Texas, 218 cars; Sherman, Texas, 92 cars; Fort Worth, Texas, 76 cars; Tyler, Texas, 223; Corsicana, Texas, 92; Waco, Texas, 167, and Dallas, Texas, 68.

As a rule, the switching we do outside of the State of Arkansas is done over more public crossings and over a heavier grade line, and in that respect with more difficulty, than within the State. We are not required in any of these other States to use the third helper. We use him at one point—Tyler, Texas. We have three crews, one day and one night and one half and half; and on the two-lead engines, one day and one night, we employ the third helper; the whole force being one engineer, a fireman, a foreman and three helpers. That is the only point outside of the State of Arkansas where we employ the third helper, and the reason that is done is because of the heavy grade line in the yards. The grade approaching the yard from the north is five-tenths of one per cent, and that grade extends clear up into the yard for a third of the distance of the yard, and the grade for the other two-thirds of the yard is seven-tenths of 1 per cent. There is not a public crossing there in any part of the yard, and the three helpers on these two engines are employed solely for the reason of setting brakes. That is, setting the brakes on the cars and protecting the cars against other cars and trains in the north end of the yard, and is made necessary by that heavy grade, as there is no crossing in the yard at that point. In my experience there is no necessity for the third helper in Arkansas for the purpose of protecting the public at public crossings. I do not know of any law in any other State that requires the third helper. In Texas where there is a full crew bill the switching of cars is specifically exonerated (Tr. pp. 273-277).

The court, upon motion by the State, excluded the testimony of J. H. Wright, heretofore copied, with reference to the switching operations of the Arkansas Central Railway

Company. The defendant objected to the ruling of the court, and saved its exceptions (Tr. pp. 534-536).

B. A. PORTER testified: I live at Memphis, Tenn. I am superintendent of the Louisiana, New Orleans & Texas Railway. It is less than five miles long. It includes just our yards there at Helena. In other words, it is a terminal road. We do switching for the Missouri & North Arkansas Railroad Company.

The defendant offered to prove by this witness that the Louisiana, New Orleans & Texas Railway Company is less than five miles in length; that it is a terminal railroad located at Helena, Ark.; that it does all the switching for the Missouri & North Arkansas Railroad Company at Helena; that the Missouri & North Arkansas Railroad is something over 300 miles in length; that it also does the switching of all the cars for the Yazoo & Mississippi Valley Railway, coming into Helena; that the Yazoo & Mississippi Valley Railway is 1,400 miles long; that they have two switch engines in the city of Helena; that these engines switch and push cars over the various crossings in the city of Helena for the Yazoo & Mississippi Valley Railway and the Missouri & North Arkansas Railway; and that this road does not comply with the act because it is less than 100 miles in length, and that in their switching crew they use an engineer, a fireman, foreman and two helpers (Tr. p. 278).

W. S. COCHRAN testified: I live at Fort Smith. I am conductor and trainmaster for the Arkansas Central Railway Company.

The defendant offered to prove by this witness that the Arkansas Central Railway Company is forty-six miles in

length; that it runs from Paris, Ark., to Fort Smith, Ark.; that it has no yards or terminals within the city of Fort Smith, but that it has a contract with the St. Louis, Iron Mountain & Southern Railway Company by which it uses all of the tracks and yards of said company at Fort Smith, for the purpose of switching its cars over said tracks; and that it does switch and push its cars over all the tracks belonging to the St. Louis, Iron Mountain & Southern Railway Company, in the city of Fort Smith, and that in doing so it uses two engines; one of the engines has a crew of an engineer, a fireman, a foreman and one helper, and the other has an engineer, a fireman, a foreman and two helpers.

J. W. DEAN, being recalled, testified:

The defendant offered to show by Mr. Dean that he was familiar with the class of switching done in all the yards in Arkansas, and that all switch engines engaged in switching cars would be engaged in interstate commerce (Tr. p. 280).

Similar testimony to that offered to be proved by Mr. Dean was offered to be proved by G. H. Schweer, who was recalled for that purpose. The court refused to permit the testimony to be introduced showing that the trains operated in the yards at Hot Springs on June 17, 1913, were being engaged in interstate commerce (Tr. p. 281).

Defendant rested.

PLAINTIFF'S REBUTTAL.

C. J. McKAY testified: I am a switchman. I have been such seven years. I have been in the employ of the Iron Mountain railroad at Little Rock and Argenta terminals. I was switchman before the foreman and three helpers were put on there. At present the Iron Mountain operates six switch engines night and eleven day in Argenta yards. They work all over the terminals. There is no certain designated portion for each engine to work. In my opinion as an expert switchman, it is necessary at the crossings to have a foreman and three helpers. I am familiar in Little Rock and Argenta with the conditions with reference to the curves, grades and blind crossings. These conditions tend to make it more dangerous in switching. I sometimes drop a car.

Q. Just explain to the court what you mean by dropping a car?

A. Well, we will say an engine is coming down here at this switch (indicating); you have got to get up high enough speed to jerk the car in; then you've got to get a slack, that is, reverse the engine, shut it off to cut the car off; run the engine in here (indicating) in one track there; throw the switch and the car will go in on another track.

Q. As I understand it, Mr. McKay, by dropping a car, you mean that the engine will be going down a track with a car behind it, and you will get up speed, run at a fair rate of speed, at a rate of speed that it requires you to run to have to jerk that car in the clear, and the engine will pass over the switch and the engine will be shut off and the car will be cut off of the engine, and the engine will go down one track and

the car will go down another track by the engine, or the track next parallel to it.

A. Yes; or some other track other than where the engine goes. It is not necessary for it to parallel the engine. I have dropped cars over public crossings lots of times. In dropping a car over a public crossing, when you have three helpers and a foreman, the foreman will go to the switch; the man following the engine will stay on the footboard; the short field man goes on top of the car, and the long field man goes to the crossing. It takes four men to perform this operation, in my opinion. We could not do this when we had a foreman and two helpers. We dropped cars across public crossings in the yards when we had a foreman and two helpers. We would go over the crossings like they were not there; no switchman to guard the crossing. It is a necessary and a practical proceeding in the various yards of Little Rock to drop cars; you have to have a man on the car when you want to drop it; he is supposed to ride it.

I never could pull the pin and cut the car loose and ride the car that is dropped across the crossing. That is a dangerous operation. The car is moved at a pretty high rate of speed. I have kicked cars across a public crossing. We could not guard the crossings, before we had the foreman and three helpers, when we wanted to kick a car across a crossing. It is necessary to have that many men to guard the crossings when a car is kicked over it. We sometimes shove or push cars over public crossings. In doing the switching, that is assigned to us, we are working all day, if working days, and all night, if we are working nights, except the time we are off to

eat. I think it is necessary in general switching operations to have these three men, when doing switching over public crossings. This performance of dropping cars, kicking cars and shoving cars is an operation that is done every day and every night.

CROSS EXAMINATION.

I have never worked at any other place as switchman except Argenta. My entire service as a railroad man has been with the Iron Mountain. It would take four men to properly drop a car; you would have one at the switch, that might be the foreman or another man; you would have one at the crossing and a man following the engine would be on the footboard of the engine; the other man rides the car; the man that rides the car does not cut it off. The man following the engine cuts them off. The field man rides; the foreman throws the switches, and the long field man watches the crossings. The man standing on the footboard of the engine can not cut the car off and ride the car, too. If there isn't any crossing we could still use the third man. This extra man might help ride. He might get on the car. Q. Then you'd have two to ride? A. Not in every case, not every time; he might get on. Q. If you were going across a crossing, you would need only one man; and if you didn't go across the crossing, you would need two men to ride it? A. The man at the crossing may catch on that cut as it goes across. Q. The man following the engine, where is he? A. He is on the footboard. There is no danger in dropping cars if it is properly done. The rule of the company is to drop cars only when it is necessary. As a rule you drop cars only when it is necessary, and when it is necessary, you must take the safe way to do it. There isn't

any safe way to drop cars. You might get killed or hurt at any time. It is more or less dangerous to handle cars. There are several crossings where you drop cars. There are Main and Ninth streets in Argenta and over Rock street; and between Rock street and the Valley Depot. There is a watchman at Main street from 7 o'clock in the morning until 6 o'clock in the evening. There is a watchman at Ninth street in Argenta from 7 o'clock in the morning until 6 o'clock in the evening. There is a watchman at Rock street and also at Commerce street. There is also a watchman at Fourth street in daytime. We drop cars over Sixth street on the Valley Division; there is a gate and watchman there, too; also at the foot of Ninth street; there is no watchman there. I can not remember any time when I dropped a car there. We dropped a car there and pushed it in. We have a run-around track there, but to take a car around it would take four or five minutes. We are limited for time, and we have so much to do, and we have got to get through. There is a run-around track on the main yards. When you have got a string of cars there, and want to set them in at the industry track, you've got to take the cars too far and work to get around them and bring them back, to go around the run-around and push them in without dropping them. It is not necessary to drop cars across a crossing when you can push them across. Lots of times we can't get it on the right end. Lots of places you can't run around. If you had time you could run around; you'd have to take the cut of cars here, cut them off and go down the river front and cross Baring Cross, and across the bridges and around the whole yards, and get in behind here, and it would take two hours to do that. If we were going to

put so many cars into the Penzel Grocery Company down here in the Little Rock yards, we would like them up on river front, that is, the main line. Before we got the third man, we dropped as many cars as we do now, in some cases. With two helpers we did the work just like we do now (Tr. pp. 283-322).

J. A. MELLARD testified: I am a switchman. I have been a switchman about fifteen years. I am in the employ of the St. Louis, Iron Mountain & Southern Railway Company in Argenta. I was a regular man in the employ of the defendant as switchman in Argenta before the law requiring them to put on the third helper went into effect. In my opinion, it is necessary, when you are switching over a public crossing, to have a foreman and three helpers for the protection of the public at the crossing. I am thoroughly acquainted with the yards in Little Rock and Argenta. I have seen a car dropped over a public crossing in Little Rock and Argenta. They do that there now, every day and every night. Before we had the third helper there was no one at the crossing to protect the public. When I am dropping a car over a public crossing, I station one of the crew at the crossing. When we shove a string of cars over crossings from around a curve, we have a man stationed on a lead car, that is, the forward car, and then we distribute our men out where they can give signals. In common, every-day switching we make a practice of dropping cars, kicking cars or shoving cars over crossings.

I have had a conversation in the last three months with L. H. Tanner, night yardmaster at Argenta, relative to the rules and about living up to the rules of the railroad company in doing switching. He said I had been railroading long

enough to know that we couldn't successfully run a railroad and live up to all the rules, and I ought to have better sense.

Before we had the extra helper, in conducting switching operations across public crossings, we did the best we could. We did not place a man at the crossing.

CROSS EXAMINATION.

I make it a rule never to drop a car of stock, unless instructed to do so by the yardmaster. He has instructed me to do so several times. It is against the rules to drop a car across public crossings and I am very much opposed to doing it. Of the cars I handle, I would not drop 1 per cent of them. We kick them across the crossings. Some engines over there never drop a car in a month. Others drop them every day. I do not drop them every day. I think we dropped two cars last week. The most of the cars dropped probably is in the stock pens and across Rock street crossing; have to drop them across Main street to get it in and across Rock street, and that is about the only two points that I know it is frequent to drop cars. There is a watchman at both of those places, a white flagman at Argenta and a one-armed negro at Rock street in the day time from 7 to 6; at Rock street there is a day and night man. These are the most frequent points that we have to drop cars. I don't think we dropped as many cars across the crossings before we had the third man as we do now. We are working more engines now than we have since the panic. We are handling more cars, too. We won't drop one car in a thousand that we handle. The engines that had the foreman and three helpers before the law went into effect were assigned to the work where there were no crossings. They were

assigned to work in the south end where there are no crossings. I have worked fifteen years. I don't remember of ever hurting any one since I have been in the yard. I remember the time when they cut that negro's leg there at the Valley depot. He was not at a crossing; he was a trespasser. In the engine I was working on, I don't remember ever hurting a man. The only man I ever saw hurt over there was this negro.

RE-DIRECT EXAMINATION.

I do not know of any one being hurt by cars being pushed or kicked across crossings in Little Rock. I have observed other crews drop cars over public crossings in Argenta and Little Rock. It is a daily occurrence to kick cars across the various crossings in Little Rock and Argenta. That is a method to expedite the work. We have not got time to shove these cars when we kick them in three times as fast. We give them a start and kick them in on the different tracks. That is a method to save time.

RE-CROSS EXAMINATION.

We are paid for ten hours a day, if we don't make but one switch. We just work ten hours, and that is all we have to do. We just operate ten hours and quit (Tr. pp. 323-336).

J. W. HOLT testified: I live at Pine Bluff. I am a switchman in the employ of the Cotton Belt. In my opinion, the protection of the safety of the public at the various crossings of the Cotton Belt yards in Pine Bluff requires that each switch engine be equipped with a foreman and three helpers, where they work over crossings. We have five blind crossings and two curves in Pine Bluff; one reverse curve. Push-

ing cars around the reverse curve requires the help of more men. We drop cars over public crossings at Pine Bluff. We have a foreman and three helpers on all but two engines, one day and one night. You can protect the safety of the public at crossings better with three men and a foreman than with two men and a foreman. Under the present law, one man protects the crossing while the other three perform the regular duties as before. Before we got the foreman and three helpers, the crossings were unprotected. We sometimes kick a car over a public crossing. I never had an accident to happen at a public crossing. Whenever we are working over dangerous crossings now, we station one of the men at the crossing. Ten hours constitutes a day's work. Dropping and kicking cars are conditions that have been such since I have been a switchman. I believe there are thirty crossings in Pine Bluff. There are no tracks in Pine Bluff but what can be shoved in, but there are tracks there where the cars have to be dropped in for the convenience of the work.

CROSS EXAMINATION.

There are five blind crossings in Pine Bluff, the Marko Mills; Marsh Commission Company; Alabama street, the track running between the two freight houses; Main street and the crossings between the old poor house and Hammett cotton warehouse. This one at Hammett is blind on the industrial track. There isn't a blind crossing in Pine Bluff that we kick or drop cars over. A blind crossing is where the track is obstructed by a building or some obstruction. The view is obstructed from the public. The engineer can see down the track, but if a pedestrian was approaching the crossing he could not see the train until he was right on the cross-

ing. At these points the Marko Mills is about four feet from the near rail; Marsh Commission Company, about the same; and at Alabama street about four or six feet. These crossings are not on the main line. We handle from one to fifteen cars in serving the Marko Mills, the Marsh Commission Company or Alabama street. All city cars are parked in No. 11, and the switch engine switches them as they use them. The switch engine goes down there and places those cars in the string, the way you want them placed in the order he is going to use them on the track as much as possible. All stuff going down the track known as Holmes track or Barlow's has to be dropped in there; also cars going to the Hammett warehouse. I believe that is all. I never have hurt anybody by dropping cars across the crossings. I have never hurt anybody by kicking cars across the crossings. I have been in Pine Bluff six years the 19th of last February. We dropped cars across the crossings and kicked cars across the crossings before we had the third helper, and I never hurt a man. I am told that it is against the rules to drop cars or kick cars across public crossings. I have been told that from my first railroad experience, but still I do it, but with as much safety as possible (Tr. pp. 337-350).

R. D. CARTER testified: I am a switchman in the employ of the defendant. I have been working for it at Little Rock nine years and three months. My duties as switchman require me to switch cars over public crossings, and drop cars over them. I sometimes kick cars over them. In my opinion as an expert switchman it requires as many men as a foreman and three helpers to perform my work with safety to the public at crossings. When we are dropping cars and have a

foreman and three helpers, we place one man on the crossing before we make the drop of the car. Before we got the third man we did not have a man to put there. When we want to kick a car one man is placed at the crossing. We did not do that before we had the third man.

Q. I want to ask you, have you ever, in the last three months or six months, made a request of any official, or Mr. Brown, to put down what is known as a crossover track near Rock street in East Little Rock yards, to keep from dropping cars there at the crossings? A. Yes; I asked Mr. Brown to see if he couldn't put a crossover switch there to save us from dropping cars over the crossing there. Q. Did he comply with your request? A. No, sir; he said it would take a considerable expense; said they would have to raise the main line to a level with the house lead (Tr. pp. 357-365).

J. E. PHILLIPS testified: I live at Little Rock, and am a switchman. I have been such nine years and six months. I am employed by the defendant in Little Rock and Argenta. In ordinary every-day switching we sometimes drop cars over a public crossing, and sometimes kick one over, or push one over. Ordinary and every-day switching requires us to do these things. In my opinion it is necessary to have a foreman and three helpers to perform the different switching operations over the crossings with safety to the public. You can not protect the safety of the public at crossings with any less men.

Q. Did you ever make a request of Yardmaster Brown or Roadmaster Strople to put in a crossover track at Rock street in Little Rock so as to make it unnecessary to perform,

or to drop cars across the public crossing? A. I didn't exactly make a request; I just mentioned it to them; told them it would be a good idea, and would save dropping so many cars there. The roadmaster said it was not on a level with Rock street.

CROSS EXAMINATION.

I never hurt any one in dropping cars across Rock street. I have been dropping cars ever since I have been switching for the Iron Mountain. There are eight or ten crossings in Little Rock and Argenta where we drop cars. It is against the rules of the company to drop cars across a crossing unless it is a case of necessity (Tr. 366-373).

F. H. BINGHAM testified: I live at Argenta. I am a switchman and have been for fourteen years. I am engaged in Argenta for the Iron Mountain. I sometimes drop cars across public crossings, and kick them across or push them across. These incidents arise in common every-day switching life. In my opinion it is necessary to have a foreman and three helpers. We can't do the work with any less. I have had Mr. Wachter to tell me to push as many as forty or fifty cars across a public crossing.

CROSS EXAMINATION.

Prior to the time the law went into effect, my switch crew consisted of a foreman and two helpers, an engineer and a fireman. We did the same class of switching that we do now. We did it the best we could. We did it with safety as far as possible. I do not recall hurting anybody switching across crossings (Tr. p. 374).

I. F. McGEHEE testified: I have been doing switching nearly ten years. I have had about fifteen years' experience. I am employed by the Cotton Belt railroad. I have dropped, kicked and shoved cars over public crossings at Pine Bluff. These conditions arise in common, every-day switching life. In my opinion the foreman and three helpers are required to perform the operations of switching across public crossings with safety to the public.

CROSS EXAMINATION.

I don't know that we have ever had an accident on street crossings. I can't recall any at this time (Tr. p. 375).

H. A. QUENIN testified: I am a switchman in the employ of the defendant at Fort Smith. I have been switching two years and three months. I have dropped, kicked and pushed cars across a public crossing. My opinion is that a foreman and three helpers are necessary to properly protect the public at crossings; we can't do that with any smaller number. The crossings at Fort Smith are situated in the business part of the city. There is a considerable amount of traffic there over some crossings.

CROSS EXAMINATION.

Before the law went into effect we had a foreman and two helpers.

RE-CROSS EXAMINATION.

I have probably had more accidents since the law went into effect, in the same length of time, than before. There were two automobile accidents that could not be helped. I was shoving a cut of ten or twelve cars; I and the long field

man were standing on the tank car; the short field man was standing on the first high car behind the tank car, and the man following the engine was on the car just ahead of the engine. The other automobile was struck with a light engine at the same crossing. Each man was on the footboard; four men on the front footboard. There were no cars being shoved at the time. I do not think that accident could have been avoided. If we had had ten men we could not have avoided it. The number of men on the crew had nothing to do with either of these two accidents (Tr. p. 383).

E. C. HOLLAND testified: I live at Helena, and am in the employ of the defendant. I have been a switchman four years with it. I have been a switchman altogether five and a half years. At Helena we sometimes push, kick and drop cars over public crossings. In my opinion a foreman and three helpers are necessary to perform the daily switching operations with safety to the public at crossings.

CROSS EXAMINATION.

It is against the rules to kick or drop cars across public crossings. There is another road switching cars in Helena, the Yazoo & Mississippi Valley. They use two engines; they drop cars across public crossings, and kick them across. There are a foreman and two helpers on these engines.

Q. They do the same class of work that you do, that is, the same class of switching? A. They don't handle as much stuff. Q. Don't one of their engines handle as much as one of yours? A. I can't say that they do. I have no personal knowledge of any accidents on these crossings. Prior to the time this law went into effect, I only had two helpers. I did

the same class of work, and never had an accident at a crossing (Tr. p. 287).

H. E. CASHBIER testified: I live at Helena; am engine foreman, in charge of the switching crew, in the employ of the St. Louis, Iron Mountain & Southern Railway Company. We drop, kick and push cars across public crossings. From my knowledge, as an expert switchman, three helpers and a foreman are necessary to protect the public at crossings where switching is done.

CROSS EXAMINATION.

I have been at Helena for ten months. I was there only four days before they put on the third man. I didn't have much experience before they put on the third man at Helena. The Yazoo & Mississippi Valley Railroad does switching in Helena proper. The Yazoo & Mississippi Valley switching crew consists of a foreman and two helpers. They switch over some of the same crossings that we do (Tr. p. 397).

J. A. CREATH testified: I live at Hope, Ark. I am engine foreman in charge of the switching crew at that point, and am in the employ of the Iron Mountain. I drop, kick and push cars across public crossings. A foreman and three helpers are necessary to properly protect the safety of the public at a crossing. I don't think you can do it with any less, as a general proposition (Tr. p. 403).

J. THORNBROUGH testified: I live at Hot Springs and am employed by the Iron Mountain; am brakeman and switchman; I have been such fourteen years. We drop, kick and push cars across public crossings. In my opinion a foreman and three helpers are necessary to properly protect the public at crossings. We have never had but two helpers here.

CROSS EXAMINATION.

We do the work that is necessary to be done here. I couldn't say that we do it with safety. We have never hurt anybody when I was with the crew. I do not recall that we have ever hurt a man (Tr. p. 410).

J. A. CASH testified: I am a switchman, employed by the Iron Mountain, and live at Hot Springs. I would say that a foreman and three helpers at this place would be best for the safety of the public (Tr. p. 411).

DEFENDANT'S REBUTTAL TESTIMONY.

J. F. MURPHY, being recalled, testified: In dropping cars in the yards, if you had four cars to the engine, and wanted to drop the rear car, it could be done the same as if we were dropping it from the engine, but, in dropping the fourth car, the man would stand on the ladder, with his foot in the stirrup and reach down with either his hand or foot and raise the lever. It is usually done by putting the foot on the lever and lifting, or if they pull it up with their hand they shove it back over the runabout and it will set. It is the safer plan to cut the car off standing in the stirrup on the side of the car than it is on the footboard of the engine, because you are not between the cars. He could run over a draw bar and knock the footboard off. The engineer under certain conditions can jerk the engine from under them; while that condition would not prevail if he was on the ladder of the car with his foot in the stirrup, and the railroad company has spent millions of dollars to keep men from being injured between the cars.

When you go to drop a car as soon as it is cut off, the engineer opens up his throttle, and kicks the cars and engine

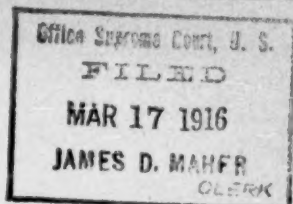
away from the one he wants to pull off. It is more dangerous to stand on the footboard of the engine and cut the car off than to stand on the car and cut it off, because if you were jerked off of the footboard you are between the rails, and if you are thrown off from the side of the car you wouldn't fall between the tracks. If you were kicking cars in the yards the man could stand on the cars you are going to kick and cut it off and ride it down. One man could cut the car off and ride it down. He could not stand anywhere else and cut it off unless he ran along by the side of the car or got in on the brake beam, which is absolutely dangerous.

CROSS EXAMINATION.

The ladder on a flat car is even with the floor of the car, about four feet six inches approximately. When a man is hanging on the side of a flat car, and wants to cut it off, he has to reach over and hold with one hand and pull the lever with the other. He would be leaning at the time (Tr. p. 414).

H. C. LEREW, being recalled, testified: In dropping cars a man can stand on the car and cut it off with as much or more safety than he can on the engine. I should think the safest place for him to stand would be on the car, for the reason that he is liable to be jerked off when the engineer opens up his engine and moves it away from the cars; if he hasn't got a firm hold on the engine, he is liable to be jerked away from it, and consequently under the cars. A man can cut a car off and ride it down. In kicking cars, the place where the man would stand would depend on which end of the lead he was on. They usually put one foot in the stirrup, one hand on the grab iron, and one foot on the oil box (Tr. p. 416).

This was all the testimony.



IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1915.

No. 302.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAIL-
WAY COMPANY, PLAINTIFF IN ERROR,

v.s.

THE STATE OF ARKANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
ARKANSAS.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

EDWARD J. WHITE,
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Attorneys for Plaintiff in Error.



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THE STATE OF ARKANSAS, DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

POINTS AND AUTHORITIES.

I.

The act is void because judicial review to test its constitutionality can be had only at the risk of excessive penalties.

Rider *vs.* Leatherman, 85 Ark., 230.

De Queen *vs.* Fenton, 98 Ark., 521, 524.

State *vs.* Lindsey, 34 Ark., 372.

Ex parte Young, 209 U. S., 123.

Wadley So. Ry. *vs.* Georgia, 235 U. S., 651.

II.

The requirements of the act operate as a regulation of and an interference with interstate commerce.

Minnesota Rate cases, 230 U. S., 352.

South Covington Ry. *vs.* Covington, 235 U. S., 537.

BRIEF AND ARGUMENT.

III.

THE ACT IS VOID BECAUSE JUDICIAL REVIEW TO TEST ITS CONSTITUTIONALITY CAN BE HAD ONLY AT THE RISK OF EXCESSIVE PENALTIES

The statute is a direct legislative enactment creating a public offense. It must be enforced as a criminal law by prosecution in the criminal courts. Injunctive proceedings against the enforcement of a criminal statute constitute a doubtful and uncertain remedy of little or no value. "Chancery courts will not interfere by way of injunction to prevent anticipated criminal prosecutions."

Rider *vs.* Leatherman, 85 Ark., 230.

De Queen *vs.* Fenton, 98 Ark., 521, 524.

Nor in any case not strictly of a civil nature.

State *vs.* Lindsey, 34 Ark., 372.

The punishment provided is a fine of not less than \$50; no maximum fine is fixed. Each crew operated is a separate offense. The testimony shows plaintiff in error has 51 crews affected by the act. Every separate day each of these crews operates can be made a separate offense; for while all the period of the operation of a crew prior to a given date, when the prosecutor should begin proceedings, would probably constitute only one offense, the prosecutor could begin a prosecution every day. After instituting a prosecution today against each of the 51 crews operated yesterday, or for the past week or month, he could tomorrow begin another prosecution against each crew for the operation subsequent to his first suit, and so on. His proceeding each time

would cover all previous operation of the crew and make it one offense, but as soon as a crew operated after his proceeding it would be a new offense, and he could thus make each day's operation by a crew a separate offense.

With these numerous and repeated prosecutions possible and no limit to the amount of the fine that can be imposed, it is manifest a railroad company cannot safely avail itself of the only certain method of judicial review of the act possible, namely, an attack on it in answer to a prosecution in the criminal court.

The only course it could adopt was the one this plaintiff in error took—that is, to omit the third helper in one operation of one crew and suffer a prosecution therefor, and, pending that, to comply with the law. The result is shown in this case. The prosecution was instituted in June, 1913, within a few days after the law became effective. Since then, for nearly three years, plaintiff in error has been compelled to comply with the law at an expense of about \$48,000 per year, while awaiting results of its appeal to the court, notwithstanding the law may finally be determined to be invalid. We say compelled to comply, meaning it must either comply or chance confiscatory fines.

This is the very result denounced as unconstitutional by the line of authorities beginning with *Ex parte Young*, 209 U. S., 123.

The recent case of *Wadley Southern Ry. vs. Georgia*, 235 U. S., 651, reaffirms the rule and collates the authorities. It especially fits our case in holding that in considering the question whether excessive penalties render the act invalid the validity is not to be decided by the fact that the State only asked a penalty for one day's disobedience instead of many. This holding is a sufficient answer to the contention of defendant in error that the question of excessive penalties is not before the court because the penalty here assessed is reasonable.

The risk of numerous and cumulative fines in order to

test the validity of the act is apparent by the terms of the statute when considered in the light of the facts shown by this record.

While the act provides a criminal prosecution to compel compliance with its requirement, that requirement is nothing more than a measure of that legislation and control of a carrier's business which Government in recent years has asserted by numerous and varied duties and prohibitions placed on the carriers.

Under our system the right of regulation in the Government and the right of private ownership of property in the carrier co-exist. The line defining the boundaries of these rights is often not readily determinable with reference to a particular measure of attempted regulation. Resort to the courts to determine it is necessary and justifiable where the nature and quality of the regulation is of doubtful character as between these two co-existing rights. Courts freely extend this access to the courts, and have held in the line of authorities above cited that an attempted regulation which denies that access, except at risk of excessive penalties, is unconstitutional for that reason alone.

There was no necessity of enforcing compliance with the regulation in question here by excessive criminal punishment, or by criminal punishment at all for that matter. There are numerous other methods just as effective and which would preserve to the carriers reasonable access to the courts to test the question whether the requirement falls within the right of Government to regulate or the right of the carrier to the enjoyment of its private property.

It being a mere regulative measure and not a crime *per se*, the act, being prohibitive of appeal to the courts to test it except at risk of confiscatory fines, is invalid under the rule of *Ex parte Young* and other cases *supra*.

IV.

THE REQUIREMENTS OF THE ACT OPERATE AS A REGULATION OF AND AN INTERFERENCE WITH INTERSTATE COMMERCE.

While it is settled that local enactments under the police power of the State in the interest of public health and safety may be made, notwithstanding they may incidentally or indirectly affect interstate commerce, any regulation which burdens or directly affects interstate commerce is not within the power of the States.

Since the case of *C., R. I. & P. Railway Co. vs. Arkansas*, 219 U. S., 453, which counsel say controls the decision of this case on this point, was decided, this court has fully examined the question of the limitations on the States in passage of acts touching interstate commerce in the *Minnesota Rate* cases, 230 U. S., 352; also in *South Covington Ry. vs. City of Covington*, 235 U. S., 537.

In the latter case a State act regulating the number of cars to be provided by an interstate carrier for transportation of passengers, the transportation being interstate as well as intrastate, was held to be a direct regulation or burden of interstate commerce and for that reason invalid.

A car is an instrumentality to be furnished for interstate transportation, no more necessary thereto than an operator of the car. Certain instruments are necessary to be provided by the carrier to properly transport traffic; a car or container for the traffic is one. But one or more hands to operate are no less necessary an instrument.

Is there a substantial difference in principle between saying a carrier shall furnish so many cars and saying it shall furnish so many switchmen?

In the case at bar it is shown that the switching crews were instrumentalities furnished by the carriers to assist in

the transportation of interstate traffic; a large part of their work is in handling cars bearing such traffic.

Can the State say you must furnish so many switchmen at a given time? We submit the State cannot any more say you must furnish a certain number of switchmen at a given time and place than it can say you must furnish a certain number of cars, and that under the South Covington Railway case the act in question here is a direct regulation of interstate commerce and is invalid. Under that case this is true whether Congress has undertaken to regulate in that respect or not.

Further than that every one of the additional switchmen required by this act are employed in interstate commerce, and Congress, by the Employers' Liability Act, has imposed upon carriers additional burdens as to such employees. The State requirement therefore directly affects interstate commerce by requiring the carrier to furnish so many additional subjects for the possible liability of the carrier, so many additional possible claimants for payments of money under the congressional act.

Congress has provided the rights of these employees, and these rights constitute burdens on the interstate carriers which Congress thought were justified and necessary. The States cannot add to these burdens by requiring additional employees. Congress saw fit to omit any enactment as to the number of such employees. Its silence leaves the inference it considers no such regulation necessary, and the States cannot supply the regulation.

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For Plaintiff in Error.



Office Supreme Court, U. S.

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BRIEF FOR THE STATE OF ARKANSAS.

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BRIEF.

The Act Assailed.

The legislature of the State of Arkansas adopted an Act, entitled "An Act for the Better Protection and Safety of the Public," which was approved February 20, 1913, requiring all railway companies operating roads one hundred miles and over in length to use crews of six men, composed of an engineer, a fireman, a foreman and three helpers, while doing switching in terminals or yards, across public crossings in cities of the first and second class, and providing a penalty

for each offense of not less than fifty dollars for violation of the Act. (Act of Arkansas, 1913, p. 211.)

The Case Below.

Plaintiff in error violated the statute in switching cars in the city of Hot Springs with less than the required number of men in the crew, was indicted and fined fifty dollars, appealing to the Supreme Court of Arkansas, challenging the constitutionality of the Act for the reasons set forth in the assignments of error to this court, namely, (1) that the provisions limiting the Act to roads of the length named constitutes unjust classification and denies the equal protection of the laws to such road, (2) that the Act is arbitrary and unreasonable and there is no necessity therefor, (3) that the Act operates as an interference with interstate commerce, (4) that the penalty imposed is so excessive as to destroy the opportunity of defense without incurring the risk of unreasonable penalties. The protection of the Constitution of the United States was invoked on these grounds.

The Supreme Court of Arkansas (114 Ark., 486), sustained the conviction, finding, as the record shows, that there was a wide conflict in the testimony of a great many witnesses, experienced men, as to whether or not the Act was necessary in order to give proper protection at crossings. The court finds that there are grounds for requiring the extra man in the crew to protect the public at crossings, and that it is the duty of the court to accept the determination of

the legislature as to the necessity for the law, and affirmed the case on the authority of the decision of this court in *C., R. I. & P. Ry. Co. vs. Arkansas*, 219 U. S., 453, and the principles there involved.

The Act Is Not Unconstitutional as Interfering With Interstate Commerce.

No claim can be made that the Act is extra-territorial in its operation. It applies only to switching over crossings within the State. The claim of interference with interstate commerce must rest, then, upon the assumption that the enactment lays an extra financial burden upon the railway which is engaged in interstate commerce. It would be only a speculation to say that it does, in fact, impose finally an additional cost upon public carriage. It is known to all who are in the least informed that the railways of the land are continually called upon to respond in damages for loss of life and property resulting from crossings accidents. Who can measure such loss in dollars and cents against what may be saved by the additional precautions required, less the additional expense? This is aside from considerations of public policy in saving and protecting human life, the declared policy of the Act. The Act may then be in real aid of commerce. But if it is admitted that the Act does finally impose a financial burden upon all carriage, and, resultantly, upon interstate commerce, it still belongs in that large class of laws which are held valid, either as resulting in a merely incidental, indirect, and remote effect upon interstate commerce, or as occupying a field reserved to the States, or not yet exclusively appropriated to national jurisdiction.

All of this is reasoned out and set at rest conclusively by the opinion of this court in upholding the constitutionality of the "Three Brakeman" Act, in *Chicago, R. I. & P. R. R. Co. vs. Arkansas*, 219 U. S., 453, and in the cases there cited. This opinion has been approvingly cited by this court in the following cases since decided: *Ry. vs. Indiana*, 223 U. S., 713; *Savage vs. Jones*, 225 U. S., 523; *C. & O. Ry. vs. Conley*, 230 U. S., 513; *Atlantic Coastline Ry. vs. Georgia*, 234 U. S., 215.

The Classification of Railways Affected Is Not So Arbitrary as to Make the Act Unconstitutional.

There may lawfully be a measure of arbitrariness in all legislative classification. The unexceptionable is not thought to be attainable, and is not, therefore, required in this field of human action. This principle and its limitations have been so often and fully discussed by this court in constitutional cases as to leave nothing to be said except by way of citation. The rules by which the validity of classification is to be tested are succinctly and lucidly summarized in *Lindsley vs. Carbonic Gas Co.*, 220 U. S., 61, as follows:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary.

"2. A classification having some reasonable basis does not offend against that clause merely be-

cause it is not made with mathematical nicety, or because in practice it results in some inequality.

“3. When the classification in such a law is called in question, if any state of facts can be reasonably conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

“4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.”

And in the same case it is said that as to police laws the Constitution embodies no “doctrinaire requirement that they should be couched in all-embracing terms,” and in another case it was said, “Indeed, the very idea of classification is that of inequality, so that it goes without saying that the fact of inequality in no manner determines the matter of constitutionality.” *Ry. vs. Mathews*, 174 U. S., 104.

And in *Price vs. Illinois*, 238 U. S., 446, it is said “The legislature is entitled to estimate degrees of evil,” and there must be a “consensus” of opinion, and it must “indubitably” appear that there is no reason for the exercise of this discretion. This court has discouraged all attempts to impart what it aptly terms “an overmathematical nicety” to the prohibitions of the Fourteenth Amendment. (*Minnesota Iron Co. vs. Kline*, 205 U. S., 537.) Thus in *Phoenix Ins. Co. vs. McMaster*, 237 U. S., 63, legislation was held valid which imposed conditions on corporations based on the amount of their in-

vestments of a certain character, and in *Booth vs. Indiana*, 237 U. S., 391, this court said of the measure of classification there adopted, "It is, however, further objected that the law discriminates because it may be applied to one mine and not to another, all other conditions being the same, but the desire of the miners—indeed, discriminates upon a distinction more arbitrary than that, upon the desire of twenty in one mine as against a lesser number, nineteen, it may be, in another. *The objection is a familiar one.* * * * *It is the usual ground of attack upon a distinction based on degree* * * *." And in *Miller vs. Wilson*, 236 U. S., 373, it is said: "The legislature is not debarred from classifying according to general considerations, and with regard to prevailing conditions, otherwise there could be no legislative power to classify. For it is always possible, by analysis, to discover inequalities as to some persons or things embraced within any specified class. A classification based simply on a general description of work would almost certainly bring within the class a host of individual instances exhibiting very wide differences; it is impossible to deny to the legislature the authority to take account of these differences, and to do this according to practical groupings in which, while certain individual distinctions may still exist, the group selected will, as a whole, fairly present a class in itself." And in *Keokee Coke Co. vs. Taylor*, 234 U. S., 224, it is said, sententiously, "It is more pressed that the Act discriminates unconstitutionally against certain classes. But while there are differences of opinion as to the degree and kind of discrimination permitted by the Fourteenth Amendment, it is established by repeated decisions that a statute aimed at what is deemed an evil, and hitting

it presumably where experience shows it to be most felt, is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well, so far as the court can see."

It is easily conceivable that, as a general condition, there is greater danger to the public from switching over crossings done by railways one hundred or more miles in length than from railways shorter in length than one hundred miles. The class of railways one hundred and more miles in length includes all of the greater and lesser trunk lines. It includes the great systems handling hundreds of trains and thousands of cars daily. It includes those which handle the long and heavy trains, and those which must cover long runs speedily, switching cars *en route*. It may have been better, more politic, to have included all lengths, but that at least is a debatable question. In the cited case, *Chicago, R. I. & P. Ry. vs. Arkansas*, *supra*, the legislation requiring a minimum crew was confined to railways fifty miles or more in length, and the classification was held valid. This case on this point was quoted approvingly by this court in *C. & O. Ry. vs. Conley*, 230 U. S., 513. Examples of classification of railways for purposes of legislation according to length of line are familiar. *Dow vs. Beidleman*, 125 U. S., 680, and *New York, N. H. & H. R. Co. vs. New York*, 165 U. S., 628, are examples of the valid exercise of this power. And other valid exercises of the power, based upon distinction of degree, amount and quantity are found in—

Easterling Lumber Co. vs. Pierce, 235 U. S., 380.

Jefferey Mfg. Co. vs. Blagg, 235 U. S., 571.

Hendrick vs. Maryland, 235 U. S., 610.

Booth vs. Indiana, 237 U. S., 391.

Phoenix Ins. Co. vs. McMaster, 237 U. S., 63.

Northwestern Laundry vs. Des Moines, 239 U. S., 436.

The Act Is Not Unreasonable as a Measure of Safety.

The Act is not unreasonable at all. It will probably rebound to the financial profit of the railways in the end, as do so many of the requirements and regulations of laws which they so insistently oppose.

Municipalities in Arkansas are graded in classes according to population, and this Act is made to apply only when switching is being done on public crossings in cities of the first and second class. There are hundreds of incorporated towns and many more stations where switching will be done over public highways free from the requirements of the Act. It is entirely reasonable to say that in cities of the first and second class traffic will be such that public crossings should be protected by the employment of an extra switchman—one more than is customarily in the crew. As it is not beyond the power of the State to require railways to lower or elevate their tracks, and abolish all grade crossings, and in one manner and another regulate crossings, the speed of trains etc., then certainly the evil of the danger and risk may be dealt with in the modified way of requiring extra watchfulness and care at such crossings. Even if the matter were questionable, the legislative determination is conclusive as to the necessity for the law.

In the trial in the court of first instance a great many witnesses testified as to the necessity for the Act. Some

giving it as their opinion that there is no necessity for it and others expressing a contrary opinion and giving reasons therefor. This testimony merely confirms the presumptive view that the legislature had proper grounds and reasons for the enactment. The legislative exercise of discretion in passing the Act under such circumstances will not be judicially restrained or controlled, or defeated merely because men differ as to whether or not the law answers a need. This court has expressed itself so frequently and plainly on the subject of the exercise by the States of such police power, when so challenged, as to put the matter here beyond doubt. In *McLean vs. Arkansas*, 211 U. S., 539, it was said: "The legislature, being familiar with local conditions, is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the Act in question is unmistakably and palpably in excess of legislative power. *Jacobson vs. Massachusetts*, 197 U. S., 11. *Mugler vs. Kansas*, 123 U. S., 623. *Minnesota vs. Barber*, 136 U. S., 313. *Atkin vs. Kansas*, 191 U. S., 207. If the law in controversy has a reasonable relation to the protection of the public health, safety or welfare, it is not to be set aside because the judiciary may be of opinion that the Act will fail of its purpose, or because it is thought to be an unwise exertion of the authority vested in the legislative branch of the government." And this was quoted and reaffirmed in *Williams vs. Arkansas*, 217 U. S., 79. In *Shevlin-Carpenter Co. vs. Minnesota*, 218 U. S., 57, it is said that the police power of a State is the "least limitable"

of its powers, and that, while such legislation may in particular instances be harsh, a court cannot for that reason set it aside. In *Jacobson vs. Massachusetts*, 197 U. S., 11, it was said: "We must assume that, when the statute in question was passed, the legislature of Massachusetts was not unaware of these opposing theories, and was compelled, of necessity to choose between them. It was not compelled to commit a matter involving the public health and safety to the final decision of a court or jury. It is no part of the function of a court or a jury to determine which one of the two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all information it had or could obtain. It could not properly abdicate its function to guard the public health and safety." And in *C., B. & Q. R. Co. vs. McGuire*, 219 U. S., 549, it was said: "The scope of judicial inquiry in deciding the question of power is not to be confused with the scope of legislative considerations in dealing with the matter of policy. Whether the enactment is wise or unwise, whether it is based on sound economical theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." And in *Chicago, R. I. & P. R. Co. vs. Arkansas*, 219 U. S., 453, it was said, of the "full crew law": "Under the evidence, there is admittedly some room for controversy as to whether the statute is or was necessary; but it cannot be said that it is so unreasonable as to justify the court

in adjudging that it is merely an arbitrary exercise of power, and not germane to the objects which evidently the State Legislature had in view. It is a means employed by the State to accomplish an object which it is entitled to accomplish and such means, even if deemed unwise, are not to be condemned or disregarded by the courts, if they have a real relation to the object." And in *Atchison, Topeka & Santa Fe. R. Co. vs. Mathews*, 174 U. S., 96, it was said: "It is a maxim of constitutional law that a legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts, and with the purpose of promoting the interest of the people as a whole, and courts will not lightly hold that an Act duly passed by the legislature was one in the enactment of which it has transcended its power." And in *Florida R. Co. vs. Reynolds*, 183 U. S., 471, it is said: "We must assume that the legislature acts according to its judgment for the best interests of the State." "The Fourteenth Amendment does not require that State laws shall be perfect." (*M., K. & T. Ry. vs. Cade*, 233, U. S., 642.)

The Supreme Court of Arkansas found that there were facts in the case which warrant the assumption that a measure of protection to the public will be accomplished by the Act. "This court has repeatedly held that in cases coming to it from the Supreme Court of a State it accepts as binding the findings upon issues of fact duly made in that court (*Miedrich vs. Lauenstein*, 232 U. S., 236) unless the case comes within that exceptional class of cases where what purports to be a finding of fact is not strictly such but is so involved with and dependent upon questions of law bearing upon the alleged Federal right as to be a decision of those questions rather

than of a pure question of fact, or where there is that entire lack of evidence to support the conclusions upon the Federal question that gives this court the right of review."

The result is that this court is asked to say that the Act involved has no relation to safety at crossings. In other words, the court is asked to adopt the view that all those who believe it has such a relation, including the legislature, which investigated the question, the witnesses who testified, and the Supreme Court of Arkansas in its judgment, are, in fact without such beliefs and opinions. For this court's judgment in holding the Act void cannot rest merely upon the finding that such beliefs and opinions are erroneous; they must be non-existent. And all this is true because "We have few scientifically certain criteria of legislation." (*Noble State Bank vs. Haskell*, 219 U. S., 104.)

Excessive Penalties.

The provision as to penalties is in a separate section from the other provisions of the Act. It is as follows:

"Section 4. Any railroad company or corporation violating the provisions of this Act shall be fined for each separate offense not less than fifty dollars, and each crew so illegally operated shall constitute a separate offense."

In the case at bar the fine is fifty dollars. The railway sought no injunctive protection against the alleged excessive penalties, as in *Ex Parte Young*, 209 U. S., 123, and evidently was never under any real fear or coercion as to penalties. No fair comparison can be made of this statute and case with

the laws involved and the case made in *Ex Parte Young*. In the latter case there was a denial of the right of judicial review of legislative rate making, except at the risk of numerous and cumulative fines and imprisonments. If there was really a fear of the penalties in the case at bar, injunctive protection would have been sought. *Wadley, Southern Ry. vs. Georgia*, 235 U. S., 651.

The objection made seems to be that no maximum limit is fixed for the penalty. This is not required either in this country or England. 12 *Cyc.*, 966, and cases cited; 1914 *Annotations*, p. 1518.

But the question is not really before the court. The penalty assessed is not unreasonable. The provision for penalties is separable, and not involved.

Wilcox vs. Consolidated Gas Co., 212 U. S., 19.

Louisville & Nashville vs. Garrett, 231 U. S., 298.

Grand Trunk Ry. vs. Michigan Ry. Com., 231 U. S., 457.

Flint vs. Stone Tracy Co., 220 U. S., 107.

Ohio Tax Cases, 232 U. S., 576.

Respectfully submitted,

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Attorneys for State of Arkansas.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAIL-
WAY COMPANY *v.* STATE OF ARKANSAS.

ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

No. 302. Argued March 17, 1916.—Decided April 3, 1916.

Legislation cannot be all-comprehensive, and police statutes otherwise valid may, without being unconstitutional as denying equal protection of the law, contain practical groupings of objects which fairly well present a class, although there may be exceptions in which the evil aimed at is deemed by the legislature to be not so flagrant.

The statute of Arkansas, requiring full switching crews on railroads exceeding one hundred miles in length, is not unconstitutional as depriving a railroad company over one hundred miles in length, of its property without due process of law, or as denying it equal protection of the law, or as an interference with, or burden upon, interstate commerce. *Chicago & Rock Island Ry. v. Arkansas*, 219 U. S. 453.

114 Arkansas, 486, affirmed.

THE facts, which involve the constitutionality under the commerce, due process and equal protection provisions of the Constitution of the United States and of the Fourteenth Amendment thereto, of the full switching crew statute of Arkansas, are stated in the opinion.

Mr. Robert E. Wiley, with whom *Mr. Edward J. While* and *Mr. E. B. Kinsworthy* were on the brief, for plaintiff in error:

The act of February 20, 1913, is discriminatory, and denies to plaintiff in error the equal protection of the laws, in violation of the Fourteenth Amendment: *Soon Hing v. Crowley*, 113 U. S. 709; *Gulf, C. & S. F. Ry. v. Ellis*, 165 U. S. 150; *Yick Wo v. Hopkins*, 118 U. S. 350-359; *Southern R. R. v. Green*, 216 U. S. 400; *Conway v. Union Sewer Pipe Co.*, 184 U. S. 540; 1 Sutherland's Stat. Const. (2d

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ed.), p. 366; *Cotting v. Kansas City Stock Yards*, 183 U. S. 79.

The act is arbitrary and unreasonable and repugnant to the due process clause of § 1 of the Fourteenth Amendment. *Adair v. United States*, 208 U. S. 161; *Mugler v. Kansas*, 123 U. S. 623; *C., M. & St. P. R. R. v. Tompkins*, 176 U. S. 167; *Mo. Pac. R. R. v. Nebraska*, 217 U. S. 196; *Washington v. Fairchild*, 224 U. S. 510; *L. & A. R. R. v. State*, 85 Arkansas, 12.

Mr. Henry M. Armistead, with whom *Mr. Ashley Cockrill*, *Mr. Wallace Davis*, *Mr. Hamilton Moses*, *Mr. W. D. Jackson* and *Mr. Gus K. Jones* were on the brief, for defendant in error.

MR. JUSTICE McKENNA delivered the opinion of the court.

An act of the State of Arkansas, entitled "An act for the better protection and safety of the public," provides as follows:

"Section 1. That no railroad company or corporation owning or operating any yards or terminals in the cities within this State, where switching, pushing or transferring of cars are made across public crossings within the city limits of the cities, shall operate their switch crew or crews with less than one engineer, a fireman, a foreman and three helpers.

"Section 2. It being the purpose of this act to require all railroad companies or corporations who operate any yards or terminals within this State who do switching, pushing or transferring of cars across public crossings within the city limits of the cities to operate said switch crew or crews with not less than one engineer, a fireman, a foreman and three helpers, but nothing in this act shall be so construed as to prevent any railroad company or cor-